

THE UNITED STATES MARSHALS SERVICE ACT OF 1985

HEARING BEFORE THE SUBCOMMITTEE ON SECURITY AND TERRORISM OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2044

A BILL TO AMEND CHAPTERS 37 AND 123 OF TITLE 28 OF THE UNITED STATES CODE, AND CHAPTER 301 OF TITLE 18 OF THE UNITED STATES CODE

AUGUST 13, 1986

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THE UNITED STATES MARSHALS SERVICE ACT OF 1985

WEDNESDAY, AUGUST 13, 1986

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeremiah Denton (chairman of the subcommittee) presiding.

Staff present: Joel S. Lisker, chief counsel and staff director; Kenneth E. Fulp, Jr., counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA, CHAIRMAN, SUBCOMMITTEE ON SECURITY AND TERRORISM

Senator DENTON. Good morning, and welcome.

The Subcommittee on Security and Terrorism meets today to receive testimony on S. 2044, the United States Marshals Service Act of 1985. The bill was proposed by the administration and introduced by Senators Thurmond, Laxalt, Biden, and myself.

The bill came up during the first oversight hearing held on the Marshals Service in quite some time on June 25 of this year. S. 2044 would formally establish the U.S. Marshals Service as a bureau within the Department of Justice, headed by a Director appointed by the Attorney General.

The bill restates the Marshals Service's traditional responsibility "to provide for the safety and security of the Federal courts," and also provides a statutory basis for the Service's many other responsibilities.

In addition, the bill would provide the means to ensure that the Service has the resources and flexibility to discharge its responsibilities in the most qualitative and efficient manner possible.

In the interests of time, I will submit my complete opening statement for the record of the hearing.

[The prepared statement of Senator Denton and a copy of S. 2044 follow:]

PREPARED STATEMENT OF HON. JEREMIAH DENTON

The Subcommittee on Security and Terrorism meets today to hold a legislative hearing on S. 2044, the United States Marshals Service Act of 1985. S. 2044 was proposed by the administration and introduced on February 4, 1986, by Senators Thurmond, Laxalt, Biden and myself.

I want to welcome our distinguished witnesses. They are Stanley E. Morris, Director of the United States Marshals Service; the Honorable William Sessions, chief judge of the U.S. District Court for the Western District of Texas, who is appearing on behalf of the Judicial Conference of the United States; the Honorable Dudley E. Bowen, Jr., judge of the U.S. District Court for the Southern District of Georgia, who is representing the Federal Judges Association; and the Honorable Sam C. Pointer, Jr., chief judge of the U.S. District Court for the Northern District of Alabama.

I would like to point out that the judges were invited by this subcommittee to testify, and, as such, they should not be viewed as engaging in any improper lobbying activities.

We look forward to hearing the testimony of each of our distinguished witnesses regarding S. 2044. I am especially pleased that the Federal judiciary is so well and ably represented at this hearing. The judiciary is, of course, greatly affected by the operating of the Marshals who, in the words of Director Morris, provide a "critical link between the executive and judicial branches . . . performing executive branch functions that are essential to the operation of the Federal judicial system."

We have already received a good deal of thoughtful and constructive comment on S. 2044 from several distinguished judges. Frankly, much of that comment has been critical of certain of the bill's provisions. We welcome that criticism, however, which will be most helpful to us in examining the bill's provisions and ensuring that it accomplishes its goal of enhancing the ability of the U.S. Marshals Service to perform its historic and statutory duties.

On June 25 of this year, the subcommittee held an oversight hearing on the U.S. Marshals Service. We were privileged to have Director Morris testify at the hearing on the history of the Marshals Service, the growth and development of its responsibilities, and the current status of its various activities.

When the Service was established in 1789, its original congressional mandate was simply to administer the district and circuit courts and execute all lawful precepts issued under the authority of the United States. Since then, its duties have been gradually and greatly expanded by Congress and by practical necessity in furtherance of its statutory charges.

Today, the Marshals Service performs a wide variety of Federal law enforcement functions, including the provision of security for courthouses, judges, jurors and U.S. attorneys; service of process and execution of court orders; apprehension of fugitives; custody and transportation of prisoners; protection of Government witnesses and their families; and seizure, management, and sale of property forfeited to the Government. These many duties have strained the manpower and budgetary resources of Marshals Service to their absolute limits.

The Marshals Service has approximately 1,900 deputies with which to provide security for 483 Federal judicial facilities and 1,773 judicial officers, as well as various U.S. attorneys, witnesses, jurors, and other trial participants. In order to provide adequate security in light of this manpower shortage, the Marshals Service has operated the Court Security Officer (CSO) Program since 1982, in cooperation with the judiciary in each Federal district and the Administrative Office of U.S. Courts. CSO's are private security personnel hired under contracts awarded by competitive bidding; they provide perimeter security at Federal courthouses and perform other security functions as directed by the Marshals.

The CSO program and other programs of the Marshals Service—such as the judicial Threat Analysis Group, Fugitive Investigative Strike Team (FIST) operations, the Witness Protection Program, and the National Asset Seizure and Forfeiture program—have been developed as a matter of necessity to enable the Marshals Service to fulfill its traditional and statutory responsibilities. S. 2044 would clarify the statutory authority for such activities.

S. 2044 would also formally establish the U.S. Marshals Service as a bureau within the Department of Justice headed by a Director appointed by the Attorney General. Under the bill, individual U.S. Marshals would continue to be appointed by the President, subject to the confirmation by the Senate. In the case of a vacancy occurring in the Office of U.S. Marshal, the bill vests the power to appoint an interim Marshal in the Attorney General.

This last-mentioned provision would change the current law, under which the power to make such interim appointments lies with the district court of the district in which the vacancy occurs. The proposed change has been criticized by members of the Judiciary, and we look forward to hearing both sides of the issue today.

S. 2044 memorializes the Marshals Service's traditional responsibility "to provide for the safety and security of the Federal Courts" in accordance with policies established by the Attorney General. The bill authorizes the Service to enter into con-

tracts, as authorized by the Attorney General, for security guard services and for the service of government process. This will give the Service the flexibility it needs in operating its CSO program and providing for process serving, thus permitting the best and most efficient use of the Marshals' time and resources.

The bill codifies the Marshals' authority to conduct and investigate fugitive matters, which has been one of the Marshals' main activities throughout the history of the Service.

S. 2044 is also intended to save the taxpayers' money by authorizing the Marshals Service to collect fees which are based on the actual costs of providing services such as process serving in civil litigation. Currently, the maximum Marshals' fee for serving court process is only \$3.00, which means that the actual costs of this service, primarily for the benefit of private litigants, is being subsidized by the American taxpayer.

In sum, S. 2044 represent a joint effort by the administration and the bill's supporters in Congress to enhance the professionalism of the U.S. Marshals Service and to provide both a statutory basis for the Service's many responsibilities and the necessary authority and flexibility to discharge those responsibilities in the most qualitative and efficient manner possible.

The bill is not, as has been suggested by some, an attempt to expand the Marshals Service's jurisdiction into areas covered by other law enforcement agencies. Rather, it is an attempt to provide statutory support for the Service's longstanding and congressionally mandated duties.

I am certain that our distinguished witnesses from the Judiciary join me and the Marshals Service in our common desire to ensure that the Marshals have the resources and flexibility to provide adequate security to the Federal courts and to perform their many other duties. That is the intent of S. 2044. It is in that spirit that we meet today; so that, together, we may consider the merits of this legislation, take account of valid criticism of it, and work toward a consensus for a strong United States Marshals Service Act.

99TH CONGRESS
2D SESSION

S. 2044

To amend chapters 37 and 123 of title 28 of the United States Code, and chapter 301 of title 18 of the United States Code.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 27), 1986

Mr. THURMOND (for himself, Mr. BIDEN, Mr. DENTON, and Mr. LAXALT) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapters 37 and 123 of title 28 of the United States Code, and chapter 301 of title 18 of the United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "United States Marshals
4 Service Act of 1985".

5 SEC. 2. Sections 561, 562, 564, 565, and 566 of title
6 28, United States Code, are amended to read as follows:

7 "§ 561. United States Marshals Service

8 "(a) There is hereby established a United States Mar-
9 shals Service as a bureau within the Department of Justice
10 under the authority and direction of the Attorney General.

1 The United States Marshals Service (hereinafter referred to
2 in this title as the "Service") shall be headed by a Director
3 appointed by the Attorney General.

4 "(b) The Director of the United States Marshals Service
5 (hereinafter referred to in this title as the "Director") shall
6 exercise the powers and duties set out in this title and as may
7 be vested in the Director pursuant to statute or by delegation
8 of the Attorney General.

9 "(c) The President shall appoint, by and with the advice
10 and consent of the Senate, a United States marshal for each
11 judicial district of the United States, except that any marshal
12 appointed for the Northern Mariana Islands may at the same
13 time serve as marshal in another district. Each United States
14 marshal shall be an official of the Service and shall serve
15 under the direction and subject to the coordination of the
16 Director.

17 "(d) Each marshal shall be appointed for a term of four
18 years. On expiration of that term, unless a marshal shall
19 resign or be removed by the President, a marshal shall con-
20 tinue to perform the duties of that office until a successor is
21 appointed and qualified or until a person is designated to act
22 as marshal in accordance with section 562.

23 "(e) The Director shall designate places within a judicial
24 district for the official station and offices of each marshal.

1 Each marshal shall reside within the district for which such
2 marshal was appointed, except that—

3 “(1) the marshal for the District of Columbia and
4 for the Southern District of New York may reside
5 within 20 miles thereof; and

6 “(2) any marshal appointed for the Northern Mar-
7 iana Islands who at the same time is serving in the
8 same city in another district may reside in such other
9 district.

10 “(f) The Director is authorized to select, appoint,
11 employ, and fix compensation for deputy marshals and such
12 officials and employees as shall be necessary to carry out the
13 powers and duties of the Service and may designate such
14 deputy marshals as law enforcement officers, in accordance
15 with the policies and procedures the Director shall establish.
16 Deputy marshals, officials, and employees are subject to dis-
17 ciplinary action, including removal, by the Director.

18 “(g) The Director shall supervise and direct the United
19 States Marshals Service in the performance of its duties, in-
20 cluding criminal investigations, and in accounting for public
21 moneys. Each official of the Service shall report any official
22 proceedings, receipts, and disbursements and the condition of
23 the office under the purview of such official as the Director
24 requires.

1 “(h) The Director may delegate to any other official of
2 the Service the authority to carry out the functions of the
3 Director.

4 “(i) There are authorized to be appropriated such sums
5 as may be necessary to exercise the powers and duties of the
6 United States Marshals Service.

7 “§ 562. Vacancies

8 “(a) In the case of a vacancy in the Office of United
9 States Marshal, the Attorney General may designate a
10 person to perform the functions and act as marshal. The At-
11 torney General shall not designate to act as marshal a person
12 whose appointment by the President to that office the Senate
13 has refused to give its advice and consent.

14 “(b) Such person designated by the Attorney General
15 may serve until the earliest of the following events:

16 “(1) the entry into office of a United States mar-
17 shal appointed by the President, pursuant to article II,
18 section 2 of the constitution;

19 “(2) the expiration of the thirtieth day following
20 the end of the next session of the Senate; or

21 “(3) if such designee of the Attorney General is
22 appointed by the President pursuant to section 561(c),
23 said designee may serve until the expiration of the thir-
24 tieth day following the refusal of the Senate to give

1 its advice and consent to the appointment by the
2 President.

3 **"§ 564. Powers as sheriff**

4 "An official of the Service, in executing the laws of the
5 United States within a State, may exercise the same powers
6 which a sheriff of the State may exercise in executing the
7 laws thereof.

8 **"§ 565. Expenses of United States Marshals Service**

9 "The Service is authorized to—

10 "(a) establish procedures and to pay for—

11 "(1) the actual and necessary expenses asso-
12 ciated with the offices established under section
13 561;

14 "(2) the expense of transporting prisoners,
15 including the transporting between the United
16 States and foreign countries persons charged with
17 crime, and including the cost of necessary guards
18 and the travel and subsistence expenses of prison-
19 ers and guards;

20 "(3) the lease, acquisition, maintenance, and
21 operation of aircraft and the lease and acquisition
22 of law enforcement and passenger motor vehicles
23 without regard to the general purchase price limi-
24 tation for any current fiscal year and including the
25 operation and maintenance for official use of vehi-

1 cles seized and forfeited to the United States
2 Government;

3 “(4) supervision of United States prisoners in
4 non-Federal institutions;

5 “(5) the purchase of firearms and ammuni-
6 tion and attendance at firearms matches and law
7 enforcement competitions;

8 “(6) payment of rewards and the purchase of
9 evidence and payments for information;

10 “(7) other necessary expenditures as required
11 by law; and

12 “(b) enter into contracts and cooperative agree-
13 ments, as authorized by the Attorney General, includ-
14 ing contracts for security guard services and contracts
15 for the service of government process in lieu of service
16 by United States marshals or deputy marshals.

17 **“§ 566. Powers and duties**

18 “(a) The United States Marshals Service is authorized
19 to provide for the safety and security of the Federal courts of
20 the United States and provide other assistance in accordance
21 with the policies established by the Attorney General.

22 “(b) Except as otherwise provided by law or Rule of
23 Procedure, the United States Marshals Service shall execute
24 all lawful writs, process and orders issued under the judicial
25 authority of the United States, in accordance with the poli-

1 cies established by the Attorney General, and shall command
2 all necessary assistance to execute its duties.

3 “(c) The Director, United States marshals, and other
4 law enforcement officers of the United States Marshals Serv-
5 ice may carry firearms and may make arrests without war-
6 rant for any offense against the United States committed in
7 their presence, or for any felony cognizable under the laws of
8 the United States if they have reasonable grounds to believe
9 that the person to be arrested has committed or is committing
10 such felony.

11 “(d) The United States Marshals Service is authorized
12 to conduct and investigate fugitive matters, domestic and for-
13 eign, as directed by the Attorney General, and probation,
14 parole, mandatory release, and bond default violators.”.

15 SEC. 3. Title 28, United States Code, is amended—

16 (a) by striking out sections 567, 568, 569, and
17 570;

18 (b) renumbering sections 571, 572, 573, 574,
19 575, and 576 to read 567, 568, 569, 570, 571, and
20 572, respectively; and

21 (c) by adding the following new section:

22 “§ 573. Authorization for certain witness security ex-
23 penses

24 “The expenses incurred for the use of facilities in the
25 protection of witnesses, and planning, construction, renova-

1 tion, maintenance, remodeling, and repair of buildings and
2 the purchase of equipment incident thereto for protected wit-
3 ness safesites shall be paid from appropriations available to
4 the Marshals Service.”.

5 SEC. 4. Section 1921 of title 28, United States Code, is
6 amended to read as follows:

7 “§ 1921. United States marshals’ fees

8 “(a)(1) The United States marshals or deputies shall
9 routinely collect, and a court may tax as costs, fees for the
10 following:

11 “(A) serving a writ of possession, partition, execu-
12 tion, attachment in rem, or libel in admiralty, warrant,
13 attachment, summons, complaints, or any other writ,
14 order, or process in any case or proceedings;

15 “(B) serving a subpoena or summons for a witness
16 or appraiser;

17 “(C) forwarding any writ, order, or process to an-
18 other judicial district for service;

19 “(D) the preparation of any notice of sale, procla-
20 mation in admiralty, or other public notice or bill of
21 sale;

22 “(E) the keeping of attached property (including
23 boats, vessels, or other property attached or libeled),
24 actual expenses incurred, such as storage, moving, boat
25 hire, or other special transportation, watchmen’s or

1 keepers' fees, insurance, and an hourly rate including
2 overtime for each deputy marshal required for special
3 services, such as guarding, inventorying, and moving;

4 "(F) copies of writs or other papers furnished at
5 the request of any party;

6 "(G) necessary travel in serving or endeavoring to
7 serve any process, writ, or order, except in the District
8 of Columbia, with mileage to be computed from the
9 place where service is returnable to the place of serv-
10 ice or endeavor; and

11 "(H) overtime expenses incurred by deputy mar-
12 shals in the course of serving or executing civil
13 process.

14 "(2) The marshals shall collect, in advance, a deposit to
15 cover the initial expenses for special services required under
16 subparagraph (E), and periodically thereafter such amounts
17 as may be necessary to pay such expenses until the litigation
18 is concluded. This paragraph applies to all private litigants,
19 including seamen proceeding pursuant to section 1916 of this
20 title.

21 "(3) For purposes of subparagraph (G), if two or more
22 services or endeavors, or if any endeavor and a service, are
23 made in behalf of the same party in the same case on the
24 same trip, mileage shall be computed to the place of service
25 or endeavor which is most remote from the place where serv-

1 ice is returnable, adding thereto any additional mileage trav-
2 eled in serving or endeavoring to serve in behalf of that
3 party. If two or more writs of any kind, required to be served
4 in behalf of the same party on the same person in the same
5 case or proceeding, may be served at the same time, mileage
6 on only one such writ shall be collected.

7 “(b) The Attorney General shall from time to time pre-
8 scribe by regulation the fees to be taxed and collected under
9 subsection (a). Such fees shall to the extent practicable, re-
10 flect the actual and reasonable cost of the service provided.

11 “(c)(1) The United States Marshals Service shall collect
12 a commission of 3 per centum of the first \$1,000 collected
13 and 1½ per centum on the excess of any sum over \$1,000,
14 for seizing or levying on property (including seizures in admi-
15 ralty), disposing of such property by sale, setoff, or otherwise,
16 and receiving and paying over money, except that the
17 amount of the commission shall be within the range set by
18 the Attorney General. If the property is not disposed of by
19 marshal’s sale, the commission shall be in such amount,
20 within the range set by the Attorney General, as may be
21 allowed by the court. In any case in which the vessel or other
22 property is sold by a public auctioneer, or by some party
23 other than the marshal or his deputy, the commission author-
24 ized under this subsection shall be reduced by the amount
25 paid to such auctioneer or other party. This subsection ap-

1 plies to judicially ordered sales and execution sales, without
2 regard to whether the judicial order of sale constitutes a sei-
3 zure or levy within the meaning of State law.

4 “(2) The Attorney General shall prescribe from time to
5 time regulations which establish a minimum and maximum
6 amount for the commission collected under paragraph (1).

7 “(d) The United States marshals may require a deposit
8 to cover any of the fees and expenses prescribed under this
9 section.

10 “(e) Without regard to the provisions of section 3302 of
11 title 31, United States Code, the United States Marshals
12 Service is authorized to credit amounts from fees and ex-
13 penses collected (including amounts for overtime expenses)
14 for the service of civil process, including complaints, sum-
15 monses, subpoenas, and similar process and seizures, levies,
16 and sales performed by the marshals to its current appropria-
17 tion account (Salaries and expenses, United States marshals)
18 for the purpose, only, of carrying out those activities.”.

19 SEC. 5. Chapter 301 of title 18, United States Code, is
20 amended to add the following new section:

21 **“§ 4013. Support of United States prisoners in non-Federal**
22 **institutions**

23 “(a) The Attorney General or his designee is authorized
24 to make payments from appropriations available to the
25 United States Marshals Service for—

1 “(1) the necessary clothing;

2 “(2) medical aid and necessary guard hire; and

3 “(3) payment of rewards for assistance in the cap-
4 ture or information leading to the capture of a Federal
5 fugitive.

6 “(b) entering into contracts or cooperative agreements
7 with any State, territory, or political subdivision thereof, for
8 the necessary construction, physical renovation, acquisition of
9 equipment, supplies, or materials required to establish accept-
10 able conditions of confinement and detention services in any
11 State or local jurisdiction which agrees to provide guaranteed
12 bed space for Federal detainees within that correctional
13 system, in accordance with regulations issued by the Attor-
14 ney General and which are comparable to the regulations
15 issued under section 4006 of title 18, United States Code,
16 except that amounts made available for this purpose shall not
17 exceed the average per-inmate-cost of constructing similar
18 confinement facilities for the Federal prison population: *And*
19 *provided further*, That the availability of such federally as-
20 sisted facility shall be assured for housing Federal prisoners
21 and the per diem rate charged for housing such Federal pris-
22 oners shall not exceed allowable costs or other conditions
23 specified in the contract or cooperative agreement.”.

Senator DENTON. I want to welcome our distinguished witnesses, which include the Director of the U.S. Marshals Service and three distinguished members of the Federal judiciary. I will introduce each of them when he is called to testify.

I would like to point out that the judges were invited to testify at this hearing by the subcommittee and, as such, should not be viewed as engaging in any improper lobbying activities.

Our first witness is the Honorable Stanley E. Morris, Director of the U.S. Marshals Service. I would like to welcome you again, Director Morris.

Mr. MORRIS. Thank you, Mr. Chairman.

Senator DENTON. Your testimony was very informative and helpful, as you know, to us at our oversight hearing on the Marshals Service in June of this year, and we look forward to further testimony today.

Your complete prepared statement will be included in the record as if read, and I ask that you take no more than 10 minutes, in the interests of time, for your oral testimony.

STATEMENT OF HON. STANLEY E. MORRIS, DIRECTOR, U.S. MARSHALS SERVICE

Mr. MORRIS. Thank you, Mr. Chairman. I appreciate very much this opportunity to further discuss the provisions of S. 2044, the United States Marshals Service Act, and to describe from our vantage point the importance of its enactment.

I have with me this morning my Deputy Director, John Twomey, along with Associate Director Howard Safir, head of operations, and Associate Director Mead, head of administration.

As I noted in my previous testimony before the subcommittee, the Office of the U.S. Marshal was established 197 years ago, concurrent with creation of the Federal judicial system. Over the years, as our Nation has developed and changed, so also have the methods and procedures whereby the marshals carry out their responsibilities.

Throughout its history, however, the Office of U.S. Marshal has retained its essential characteristic as the critical link between the executive and judicial branches of Government.

Unfortunately, the statutory basis for the missions, organization and administration of the U.S. marshals has not changed over the years to adequately reflect our new responsibilities.

S. 2044 seeks to strengthen and clarify the statutory basis and authority for the Service so that it can more effectively carry out its current law enforcement responsibilities.

I want to emphasize at the outset that the proposal is not designed to alter the essential character of the agency or its relationship with either the judiciary or other executive branch agencies.

Rather, it is intended to improve the Service's capacity to effectively carry out its basic duties, which I described in some detail in my previous testimony. Many of the provisions of S. 2044 are technical in nature and would result in no substantive change from current practice.

For example, section 564 of the bill restates the marshals' historic authority to execute the laws of the United States, while modify-

ing the language to make it clear that it applies to all law enforcement officers within the Marshals Service.

Amendments to current law of this kind and others that would consolidate existing related authorities into a more logical sequence can be viewed, in my view, as perfecting in nature rather than substantive. Nevertheless, they are very important from the standpoint of the efficient administration of the agency.

Other provisions of S. 2044 would significantly alter and strengthen the Service's ability to carry out its mission. These key provisions include the following: Section 561 would establish the U.S. Marshals Service as a bureau within the Department of Justice.

Although the Service actually functions in that manner and the Congress, through the appropriations process, has long recognized its role, it is not generally understood that the Marshals Service exists by virtue only of an order and delegations of authority by the Attorney General.

Existing law provides for the Office of U.S. Marshal in the various judicial districts, but makes no specific provision for a central coordination and management mechanism. Thus, the language of section 561 would confirm by statute the current relationships between the Attorney General, the Marshals Service, and individual U.S. marshals.

In so doing, it would also give recognition to the Service's stature as a discrete component of the Department of Justice.

Section 562 would authorize the Attorney General to appoint a temporary U.S. marshal in the event of a vacancy in that office in the district. Currently, when the position of U.S. marshal becomes vacant, the pertinent chief judge of the district court appoints an interim U.S. marshal.

When the current practice was established in the 18th century, communications between the seat of government and the judicial districts on the frontiers of a developing nation were extremely slow and difficult. It was thus necessary to provide for prompt interim U.S. marshal appointments by the district court.

With today's modern communications, the anomaly of the judicial branch actually selecting executive branch officials is unnecessary and, we believe, antithetical to the orderly administration of the U.S. Marshals Service mission. Only if the U.S. marshal is appointed by his superiors in the executive branch can a true transition be assured.

The section also includes provisions strictly limiting the duration of interim appointments to ensure that the advice and consent role of the U.S. Senate is preserved. There is no comparable provision in existing law.

Section 565 consolidates within one major section many of the funding and procedural authorities necessary for the efficient operation of the Marshals Service. It also provides specific personal service contracting authority for the hire of guards as needed and persons to assist in the service of process.

This authority would enable the Service to directly supervise and control the court security officers who provide perimeter security at Federal court buildings and who are currently employees of corporate contractors.

The proposed new section 566 has received the most attention of all the provisions of S. 2044. Many of the views expressed, particularly by the Court Administration Committee of the Judicial Conference, have been thoughtful and constructive. Some, unfortunately, have, I believe, been intemperate and uncompromising.

The proposed section 566(a) would revise and replace the provisions of current 28 U.S.C. 569. Section 566(a) would authorize the Marshals Service to provide for the safety and security of the Federal courts, and provide other assistance in accordance with the policies established by the Attorney General.

Section 566(b) would require the Marshals Service to execute the writs, process, and orders of the court.

Some objections to these provisions have been raised, particularly in relation to the repeal of the provision of current section 569(a), by which the court may require a marshal "to attend any session of court."

The current practice of the courts and the U.S. marshals in the vast majority of districts conforms with the 1982 joint policy on court security established by the Chief Justice of the United States and the Attorney General, and adopted by the Judicial Conference of the United States.

This policy was subsequently endorsed by the Congress on numerous occasions through the appropriations process and instructive language in reports accompanying appropriations actions.

The policy is based upon the legitimate security and law enforcement needs of the judiciary. It excludes attendance of marshals in court only in those situations where their presence does not serve these purposes.

The bailiff function, for instance, is not a proper security function justifying the use of a trained law enforcement officer, such as a deputy U.S. marshal. A few vocal members of the judiciary, however, have adamantly resisted this policy.

Now using the term "court security" to cloud the issue, they have strenuously objected to repeal of the existing section 569(a), in the hope of unraveling the earlier joint policy agreement.

I think it is important to note at this juncture that some of the claims made by a few individuals in connection with this issue are, at best, I believe, disingenuous. These claims fall into two categories: First, that the Marshals Service has expanded or is seeking to expand its role in the Federal justice system.

The truth is, of course, that the authority and responsibilities of the U.S. marshal have been exceedingly broad throughout history. What we do today is basically the same as what marshals have been called upon to do for nearly 200 years—execute all lawful writs, process, and orders issued under the authority of the United States; arrest fugitives from justice; hire and supervise jails for Federal prisoners in our custody; and take custody of vessels and goods seized pursuant to court orders, and sell property seized in satisfaction of judgments.

The way we carry out our responsibilities has obviously changed over time. We use aircraft to transport prisoners instead of horse-drawn prisoner wagons. We employ modern merchandising methods to sell forfeited property instead of auctions in the town square. We hire personnel under civil service procedures at the Office of

Personnel Management instead of rounding up a few idle citizens to form a posse in pursuit of a fugitive. But the essential functions of the Marshals Service remain as they have for decades.

The second category of specious claim is that the Marshals Service has arbitrarily withdrawn from its historic responsibility to the courts. Cited as examples are such matters as implementation of the court security officer program, elimination of personal services civil process, and the practice of not assigning Marshals Service personnel to routine, nondangerous judicial proceedings.

As you know, Mr. Chairman, and as most members of the judiciary are also aware, these programs and practices are not the result of unilateral action by the Marshals Service. They are, instead, based on formal policy determinations enunciated by the representatives of the three coequal branches of the Federal Government—the President and the Attorney General, the Chief Justice and the Judicial Conference of the United States, and the Congress.

I submit, Mr. Chairman, that any argument against repeal of 28 U.S.C 569 that is based on resistance to policies flowing from actions by the Congress, the Judiciary, and the executive branches has little to recommend it.

Similarly, an argument based on claims that the Marshals Service seeks to expand or alter its role in the justice system simply ignores 197 years of history.

However, the legitimate and appropriate views expressed directly to me by Judge William S. Sessions, chairman of the Subcommittee on Judicial Improvements of the Judicial Conference, reflected the fact that members of the judiciary have an obvious and ongoing concern for the security of the courts and the safety of participants in the judicial process.

Judge Sessions argued very persuasively that the courts' interests require a continuing, strong voice in the policies governing Marshals Service practices in this regard. I have discussed the matter on several occasions with members of the Court Administration Committee and I have corresponded and met with Judge Sessions and members of the Court Administration Committee in an effort to satisfy their concerns, while at the same time providing for establishment of a policy development procedure that is consistent with the separation of powers principle.

I am indeed happy to report, Mr. Chairman, that we have reached agreement and that I will urge the subcommittee to favorably consider substitute language for sections 566 (a) and (b) that has been developed by the Court Administration Committee under the able chairmanship of Judge Elmo Hunter.

The amended language represents a compromise between our original proposal, which, from our perspective in the executive branch, is the most desirable approach, and the current language of section 569, which is viewed favorably by many in the judicial branch.

The substitute language would authorize the Judicial Conference of the United States to develop and establish policies under which marshals may be required to attend sessions of court.

This will preserve the close, cooperative relationship between the courts and the Marshals Service and facilitate implementation of a

consistent, uniform policy on the important matter of security in Federal courtrooms.

This section of the bill also contains two additional provisions. Section 566(c) restates the authority of Marshals Service personnel to carry firearms and make arrests. Proposed section 566(d) incorporates into the statute the authority currently provided by delegation from the Attorney General for the Marshals Service to conduct fugitive investigations.

Section 4 of the bill would amend 28 U.S.C. 1921 to allow the Attorney General to modify the U.S. marshal's fees which are presently inflexibly prescribed by law at extremely low rates—\$3.

Under the amendment, the fees to be set by the Attorney General would permit the recovery of the actual cost of serving non-Federal process, writs, and orders, on the order of about 40,000 pieces of process a year.

It also would allow the Service to credit such fees to its current appropriations accounts to help defray operating expenses for these activities.

The proposed new section 18 U.S.C. 4013 would establish permanent authority for the Cooperative Agreement Program. Under this program, Federal funds are provided to State and local authorities to improve their jail facilities and conditions in exchange for the housing of Federal prisoners.

Mr. Chairman, that concludes my summary of the key provisions of S. 2044, and I would be pleased to try to answer questions that you or any other members of the subcommittee may have.

Senator DENTON. Thank you for your testimony, Director Morris. I will ask you some questions, some of which you answered at the last hearing in June, but I believe that for the record at this hearing and also for the benefit of the persons present, you should answer them again today.

S. 2044 would formalize the Marshals Service's status as a bureau within the Department of Justice, similar to that of its other divisions and bureaus. Why, then, does the legislation not provide for the appointment of the Marshals Service Director by the President, since the President appoints all Assistant Attorneys General, the FBI Director, and other agency heads?

Mr. MORRIS. Well, Mr. Chairman, actually, the appointment varies from law enforcement agency to law enforcement agency. Customs is headed up by a Secretary of the Treasury appointee, as is the head of ATF and the Secret Service.

The head of the Bureau of Prisons is appointed by the Attorney General. As you pointed out, DEA and FBI are, in fact, appointed by the President.

However, having said that it is a mixed bag in terms of Senate confirmation and Presidential appointment, I believe that the position of Director of U.S. marshals should be Presidentially appointed because of its unique relationship in the management and oversight of the 93 Presidentially appointed marshals.

The only reason that it was not included as a provision is, in the interest of trying to get a bill sent up to the Hill, there were some questions that would have required another set of offices at the White House to review. And in the interests of time, we just simply kept that as the status quo.

However, I talked with the Attorney General about this and I do not believe that the administration would have any objection to changing the appointment from Attorney General to President.

Senator DENTON. In your opening statement, having identified Judge Sessions and his position, you reported that the Marshals Service has reached agreement with the Judicial Conference of the United States on an amendment to S. 2044 whereby policies would be established under which marshals could be required to attend sessions of court.

As that agreement stands and the amendment stands, do you believe the amendment actually would give judges adequate assurance that marshals will provide adequate security for Federal courts?

Mr. MORRIS. Yes; Mr. Chairman, I do. I know that both Judge Sessions' subcommittee as well as the Court Administration Committee, of which his subcommittee is a part, felt that with amendatory language as outlined here, it would, in fact, meet the security concerns of the judiciary.

Of course, I will rely on Judge Sessions to speak for himself. I will point out, however, that this position has not been fully adopted by the Judicial Conference of the United States, which is supposed to meet in September, but this will be the recommendation of the Court Administration Committee of the Judicial Conference.

Senator DENTON. It has been suggested by some Federal judges that the management of the court security function be taken over by the courts. What is your opinion of that proposal?

Mr. MORRIS. I believe that it would be inherently unwise. My own sense is that a person who makes their own security determinations is a bit like the person who represents himself in court, and that is he may have a fool for a client.

I think that there is a clear set of evidence in the security area that an independent, careful, external assessment of security needs is an important preamble to any determination of accurate security needs, and I think that that is an executive branch function.

I think that in every instance that I am aware in which there was a security need, the Marshals Service was there to provide for it. I have never heard of one single instance in which the security of the courts was breached by any adverse decision made by the Marshals Service.

Judicial security has been in the past, is today, and will ever be the most important responsibility that we carry out.

Senator DENTON. If there are still some judges concerned that S. 2044 would remove the Marshals Service from its historic role in assisting the Federal courts, is there anything further in the way of assurance you would like to provide them?

Mr. MORRIS. Well, I think it is important that we make clear what it is we, in fact, are talking about. If we are discussing the issue of security as adopted by the Judicial Conference and appropriated by the appropriations committees, I think that we are in a very good position to provide the necessary security.

I really think, Mr. Chairman, what we have been seeing in a number of places is a concern about the permanent presence in the courtroom of a deputy marshal whenever the judge is on the bench.

That is basically a bailiff function, somebody who is there on a routine basis to cry open the court, call the witnesses, do all the routine activities, and provide a security presence.

I have no personal objection to a bailiff. I do not believe that either the training or the security responsibilities of a deputy U.S. marshal should be used as a bailiff. That is what we are talking about.

There is, in fact, specific language in statute that provides for a bailiff. The courts could hire them and, in fact, there is a provision that the marshal could hire a bailiff for the judge.

However, the current statute permits a payment up to \$6 a day, and needless to say, there is not a lot of market out there at \$6 a day.

Senator DENTON. As you know, the bill would give to the Attorney General the exclusive authority to appoint a temporary U.S. marshal. Why do you feel that is important as a change, since Federal judges have had the authority to appoint interim marshals for nearly 200 years?

Mr. MORRIS. Well, as we are looking at a range of Supreme Court decisions recently, I think that there has been a sorting out and a clearing up of the responsibilities of the various branches.

I think that this provision would go toward helping to clarify what, in fact, is, I think, on anybody's term an executive branch function; that is, the selection of the U.S. marshal in a district.

It is historically there because, in fact, there was precious little supervision over that U.S. marshal for more than 125 years. As you know, the U.S. marshals antedate the establishment of the Department of Justice by some 85 years.

So the fact is that this is a long and historic role—nevertheless, I think it is time to change what is, in fact, an historic anomaly. One concern that I have is it raises a very serious question both in the public's mind and, quite candidly, sometimes in the minds of my people as to who they work for if, when a vacancy occurs, the judge makes the U.S. marshal appointment.

The judge, in fact, can reach down and not pick the ranking person or the supervisor. He can reach down and pick anybody to serve as a marshal that he deems appropriate. That raises administrative problems for me and my successors that the Senate and the Congress should change.

Senator DENTON. Is S. 2044, in your opinion, intended to expand the jurisdiction of the Marshals Service into areas of law enforcement now covered by the FBI or other law enforcement agencies?

Mr. MORRIS. Absolutely not. There is nothing intended in this legislation that would expand our current authorities.

Senator DENTON. S. 2044 would give personal services contracting authority to the Marshals Service. Why would the Service need that authority?

Mr. MORRIS. We have had historically a unique way in which we have carried out some of our responsibilities, unlike, for example, the FBI. They operate almost exclusively with people that they hire as regular agents.

About 20 percent of our work force are part-time guards, part-time deputy marshals, building off of our old responsibility, basically, to call out a posse. As time has changed, we have gone through

a phenomenon in which the Congress has added a whole set of new procurement rules and regulations.

And quite candidly, Mr. Chairman, I think we probably are right up to the edge of what we, in fact, can lawfully do. Personal services contracting authority would allow us to contract with an individual and would allow us to operate within the contracting procedures and continue to do in the future what we have done in the past, and that is hire individuals on a part-time basis to carry out certain unique responsibilities.

Let me give you an example. We have, as you probably have seen, a whole range of trials in New York and elsewhere of the—I guess we can say it now—Mafia, LCN, traditional organized crime figures, whatever the term is, many of the defendants are advanced in years and many of them find themselves, while in custody, having to be taken to hospitals.

What we will do in that situation is hire an off-duty police officer or a retired police officer to go and provide security while that person in our custody is in the hospital. It has been very helpful for us in the past. We need this authority, basically, to contract personally for such work.

We are also interested in the possibility of exploring with the administrative office of the U.S. courts hiring court security officers individually rather than through large contracts.

It is our view that we could perhaps save as much as 20 to 25 percent if we were able to do that.

Senator DENTON. It is my understanding, Director Morris, that under the Marshals Service's Court Security Officer Program, the Service obtains private security guards to provide security at Federal courthouses.

Would you explain how that CSO contract is awarded and the resulting contractual relationship between the Marshals Service and the CSO?

Mr. MORRIS. The Court Security Officer Program has been an outstanding success, given where we started some years ago. Specifically, each of the 93 districts is responsible for establishing a court security committee, and that committee basically helps to define what the security needs of the court are, where the court security officers are needed, in what timeframe that they should be deployed, and the like.

Based upon the determination of the chief judge, the U.S. attorney, the U.S. marshal, GSA, and others, we come up with a plan, a proposal. That has gone out for routine competitive bidding and at the end of that bidding process, we select the best and most cost-efficient contractor to carry out the responsibilities.

We then specially deputize each of the court security officers. We qualify them with a Service-issued revolver, and each court security officer is sent to Glynnco, GA, the Federal Law Enforcement Training Center, for a 1-week orientation.

As I say, I think the program has worked quite well. It is concentrated primarily on retired police officers and, as a consequence, in most areas we have an experienced person, much higher quality than any of the routine rent-a-cops that you might see from time to time wandering around supermarkets and shopping centers.

Senator DENTON. Well, you say they are usually chosen from retired police officers and are given 1 week at Glynco. Is there any more tightened set of requirements regarding their qualifications?

Mr. MORRIS. Yes. We require them to have graduated from a certified police training academy, so that pretty much gives us one category of people, and we have been looking very hard at fitness for duty standards. Generally, I think that the quality is quite high.

I think it is important to note what it is these court security officers do. Their job really is to provide security at the perimeter; that is, they run the magnetometer or the x-ray machines, just like you have here at the entrances of the Dirksen Building.

Their job basically is to ensure that problems are dealt with at the exterior rather than at the interior of the building, particularly in the courtroom itself. We have, in fact, screened thousands of weapons out and made a number of arrests at courthouses around the United States.

Senator DENTON. Then the Marshals Service court security officer is not to be seen as substituting for in any way the marshal, who would be on the scene at the request of the judge or in any special situation in which the Marshals Service feels that extra security is required at that trial?

Mr. MORRIS. The only time that a court security officer is—let me start again.

The primary responsibility for the court security officer is perimeter security. He or she basically is providing a response to concerns that the judiciary raised a number of years back when GSA withdrew the Federal protective officers out of a number of courthouses around the United States.

So we, using the funding from the administrative office of the courts, have managed this program to provide security at the perimeter. They do not move prisoners; they do not sit in proceedings where a security presence is required of a deputy marshal. They are not a substitute for deputy marshals when, in fact, they are required.

Now, we did do a test in three areas in which we have used court security officers in the more bailiff-oriented role; that is, in certain proceedings, status hearings, or nondangerous civil proceedings or nondangerous criminal proceedings, where, under the ground rules worked out between the Attorney General and the Chief Justice, a deputy U.S. marshal would not be required.

We have used some court security officers in a number of districts in those areas on the request of a judge, and I think that is fine. It is, after all, the judiciary's money. We have tried to provide them some training in terms of the normal decorum in how a court proceeding works.

Senator DENTON. All right. Thank you very much, Director Morris. We have additional questions from the subcommittee which we will submit to you in my name. Also, the chairman of the Judiciary Committee, Senator Strom Thurmond, has some questions which we will submit to you in writing. We ask that you promptly submit the answers to these questions.

Mr. MORRIS. I will be pleased to do so, Mr. Chairman.

Senator DENTON. Thank you very much, Director Morris.

Mr. MORRIS. Thank you very much.

[Mr. Morris' submissions for the record follow:]

STATEMENT
OF
STANLEY E. MORRIS
DIRECTOR
UNITED STATES MARSHALS SERVICE

Thank you, Mr. Chairman, for this opportunity to further discuss the provisions of S. 2044, the United States Marshals Service Act, and to describe from our vantage point the importance of its enactment.

As I noted in my previous testimony before this Subcommittee, the office of United States Marshal was established 197 years ago, concurrent with creation of the Federal judicial system. Over the years, as our Nation has developed and changed, so also have the methods and procedures whereby the Marshals carry out their responsibilities. Throughout its history, however, the office of U.S. Marshal has retained its essential characteristic as the critical link between the Executive and Judicial Branches of government.

Unfortunately, however, the statutory basis for the missions, organization, and administration of the U.S. Marshals has not changed over the years to adequately reflect its responsibilities as they have evolved with the increased sophistication and complexity of the judicial process and the technologies of law enforcement.

S. 2044 seeks to strengthen and clarify the statutory basis and authority for the Service so that it can more effectively carry out its current law enforcement responsibilities. The bill would amend Chapters 35 and 123 of Title 28, United States Code.

I want to emphasize at the outset that the proposal is not designed to alter the essential character of the agency or its relationship with either the judiciary or other Executive Branch agencies. Rather, it is intended to improve the Service's capacity to effectively carry out its basic duties.

These duties, which I described in some detail in my previous testimony, are: to provide for the security and safety of judicial facilities, judges, jurors, and witnesses; to execute the orders of the courts and provide for the service of process; to transport and produce prisoners for court proceedings; to apprehend those who flee from the judicial process or escape from custody; to administer the drug asset seizure and forfeiture program; to provide for the safety of protected government witnesses; and to carry out other functions assigned by statute or direction of the Attorney General.

Many of the provisions of S. 2044 are technical in nature and would result in no substantive change from current practice. For example, section 564 of the bill restates the Marshal's historic authority to execute the laws of the United States, while modifying the language to make clear that it applies to all law enforcement officers of the Marshals Service. Amendments to current law of this kind, and others that would consolidate existing, related authorities into a more logical sequence can be viewed as "perfecting" in nature, rather than substantive. Nevertheless, they are very important from the standpoint of efficient administration of the agency.

Other provisions of S. 2044 would significantly alter and strengthen the Service's ability to carry out its mission. These key provisions include the following:

The proposed section 561 would establish the United States Marshals Service as a bureau within the Department of Justice. Although the Service actually functions in that manner and the Congress, through the appropriations process, has long recognized its role, it is not generally understood that the Marshals Service exists by virtue of an order and delegations of authority by the Attorney General. Existing law provides for the office of U.S. Marshal in the various judicial districts but makes no specific provision for a central coordination and management mechanism. Thus, the language of section 561 would confirm by statute the current relationships between the Attorney General, the Marshals Service, and the individual U.S. Marshals. In so doing, it would also give recognition to the Service's stature as a discrete component of the Department of Justice.

Section 562 would authorize the Attorney General to appoint a temporary U.S. Marshal in the event of a vacancy in that office in a district. Currently, when the position of

U.S. Marshal becomes vacant, the pertinent district court appoints an interim U.S. Marshal. When the current practice was established in the 18th century, communications between the seat of Government and the judicial districts on the frontiers of a developing nation were extremely slow and difficult. It was thus necessary to provide for interim U.S. Marshal appointments by the district court.

With today's modern communications, the anomaly of the Judicial Branch selecting Executive Branch officials is unnecessary and often antithetical to the orderly administration of the U.S. Marshals Service's mission. Only if the U.S. Marshal is appointed by his superiors in the Executive Branch can a smooth transition be assured. The section also includes provisions strictly limiting the duration of interim appointments to insure that the advice and consent role of the U.S. Senate is preserved.

Section 565 consolidates within one major section many of the funding and procedural authorities necessary for the efficient operation of the Marshals Service. It also provides specific personal service contracting authority for the hire of guards as needed and persons to assist in the service of process. This authority would enable the Service to directly supervise and control the court security officers who provide perimeter security at Federal court buildings and who are currently employees of corporate contractors. Such an arrangement would be highly cost-effective in that it would: (1) significantly reduce overhead costs incurred under the existing contracting procedure, and (2) would additionally permit the efficient and timely service of certain process by contract employees instead of the extremely costly practice of such service by highly trained Marshals Service law enforcement personnel.

The proposed new section 566 has received the most attention of all the provisions of S. 2044. Many of the views expressed, particularly by the Court Administration Committee of the Judicial Conference, have been thoughtful and constructive. Some, unfortunately, have been intemperate and uncompromising.

The proposed section 566(a) would revise and replace the provisions of current 28 U.S.C. 569. Section 566(a) would authorize the Marshals Service to provide for the safety and security of the Federal courts and provide other assistance in

accordance with the policies established by the Attorney General. Section 566(b) would require the Marshals Service to execute the writs, process and orders of the court. In both instances, these functions would be performed under policies established by the Attorney General, under whose authority the Marshals Service currently operates.

Some objection to these provisions has been raised, particularly in relation to repeal of the provision of current section 569(a) by which the court may require a marshal "to attend any session of court." The current practice of the courts and the U.S. Marshals in the vast majority of districts conforms with the 1982 joint policy on court security established by the Chief Justice and Attorney General and adopted by the Judicial Conference of the United States. This policy was subsequently endorsed by the Congress on numerous occasions through the appropriations process and instructive language in reports accompanying appropriations actions. The policy is based upon the legitimate security and law enforcement needs of the judiciary. It excludes attendance of Marshals in court only in those situations where their presence does not serve these purposes. The bailiff function, for instance, is not a proper security function justifying the use of a trained law enforcement officer, such as a Deputy U.S. Marshal. A few highly vocal members of the judiciary, however, have adamantly resisted this policy. Now using the term "court security" to cloud the issue, they have strenuously objected to repeal of the existing section 569(a) in the hope of unravelling the joint policy agreement.

The legitimate and appropriate views expressed directly to me by Judge William S. Sessions, Chairman of the Subcommittee on Judicial Improvements of the Judicial Conference, reflected the fact that members of the judiciary have an obvious and ongoing concern for the security of the courts and the safety of participants in the judicial process. Judge Sessions argued very persuasively that the court's interests require a continuing, strong voice in the policies governing Marshals Service practices in this regard.

I have discussed the matter on several occasions with members of the Court Administration Committee and I have corresponded and met with Judge Sessions and members of the Court Administration Committee in an effort to satisfy their concerns while, at the same time, providing for establishment of a policy

development procedure that is consistent with the Separation of Powers principle. I am happy to report, Mr. Chairman, that we have reached agreement and that I will urge the Subcommittee to favorably consider substitute language for sections 566(a) and (b) that has been developed by the Court Administration Committee under the chairmanship of Judge Elmo Hunter.

The amended language represents a compromise between our original proposal which, from our perspective in the Executive Branch, is the most desirable approach, and the current language of section 569, which is viewed favorably by many in the Judicial Branch. The substitute language would authorize the Judicial Conference of the United States to develop and establish policies under which Marshals may be required to attend sessions of court. This will preserve the close, cooperative relationship between the courts and the Marshals Service and facilitate implementation of a consistent, uniform policy on the important matter of security in Federal courtrooms.

This section of the bill also contains two additional provisions. Section 566(c) restates the authority of Marshals Service personnel to carry firearms and make arrests. Proposed section 566(d) incorporates into the statute the authority currently provided by delegation from the Attorney General for the Marshals Service to conduct fugitive investigations.

Section 4 of the bill would amend 28 U.S.C. § 1921 to allow the Attorney General to modify the U.S. Marshals' fees which are at present inflexibly prescribed by law at extremely low rates. Under the amendment, the fees to be set by the Attorney General would permit the recovery of the actual costs of serving non-Federal process, writs, and orders. Currently, the costs of these services are not adequately recovered through fees collected by the Service and the difference is paid from general Federal revenues. It also would allow the Service to credit such fees to its current appropriations account to help defray operating expenses for these activities. This is consistent with the principle that Government programs having particular benefits for identifiable recipients should be self-sustaining to the extent practical.

The proposed new Section 18 U.S.C. § 4013 would establish permanent authority for the Cooperative Agreement Program. Under this program, Federal funds are provided to state and

local authorities to improve their jail facilities and conditions in exchange for the housing of Federal prisoners.

Mr. Chairman, that concludes my summary of the key provisions of S. 2044. I will be pleased to answer any questions you or members of the Subcommittee may have.

RESPONSES OF STANLEY MORRIS
TO WRITTEN QUESTIONS SUBMITTED BY SENATOR DENTON

COURT SECURITY COMMITTEE

Q. You explained that each Federal Court District has a Court Security Committee which identifies individual courts' security needs. Do these Court Security Committees include Federal Judges from the Districts, and do the judges participate in decisions regarding the security requirements for civil trials?

A. Each District Court Security Committee is composed of the Chief Judge of the District (or designee), the U.S. Marshal, the U.S. Attorney, the Clerk of the Court, and a representative of building management (usually, the General Services Administration). Not all district judges sit on the Committee; rather, they make their views known to the Chief Judge or U.S. Marshal who presents them when the Committee is in session.

Generally, the Committee issues local policies regarding the provision for security at civil trials. Most of these are in harmony with the policy of the Judicial Conference which states that Deputy Marshals should not normally be used for low risk proceedings. However, under existing

legislation--local and national court policies notwithstanding, individual judges may still order Deputy Marshals to attend any session of court.

FUGITIVE APPREHENSION

- Q. S. 2044 authorizes the Marshals Service "to conduct and investigate fugitive matters, domestic and foreign." How, if at all, would that provision change the Service's traditional and current activities with regard to fugitive apprehension?
- A. The authority to apprehend fugitives is an essential aspect of the Marshals Service's responsibility to execute the orders of the court. Moreover, it is basic to the integrity of the judicial system that those who violate the orders of the court or flee from justice are apprehended and returned to the judicial process.

The proposed section 566(d) is a codification of the fugitive authority currently provided in 28 CFR, Part O. It does not change the role of the Marshals Service with regard to fugitive apprehension.

CSO STANDARDS

- Q. How would S. 2044 improve your ability to maintain and enforce high standards of quality for CSO's?
- A. Current contract procedures do not allow enforcement of quality standards beyond the "minimally qualified" level. In an effort to minimize cost and maximize profits, contractors typically substitute lower quality CSO's

over the term of the contract, with no corresponding reduction in contract costs. Personal services contracting authority allows the Marshals Service to tailor individual requirements to the specific CSO position and enforce them without regard to the CSO work force in general.

COURT SECURITY OFFICER (CSO) PROGRAM

Q. Could you explain what aspects of Federal Court Security are handled by CSO's and what aspects are handled by U.S. Marshals?

A. There is no overlap between the two. CSO's provide general facility and perimeter security at court facilities, while Deputy U.S. Marshals provide courtroom security and personal protection for threatened judges and other judicial officers. As I indicated earlier, CSO's are replacements for the Federal Protective Officers that used to screen entrances to Federal buildings.

Typical CSO duties include:

- ° Entrance Control - operation of X-ray machines and metal detectors
- ° Roving patrol of court areas
- ° Fixed security posts outside courtrooms or chambers or monitoring security alarm consoles
- ° Enforcing Federal law in the court facility lobby or as otherwise necessary in the facility under emergency conditions.

At the same time, Deputy U.S. Marshals provide necessary protection to judges and other threatened court officials, secure courtrooms during high security court proceedings, transport and guard prisoners, execute warrants and other court orders, and protect government witnesses.

Q. Would S. 2044 improve your ability to provide training to CSO's?

A. Under existing regulations pertaining to government contracts, we are presently limited to providing "orientation" for CSO's--who are not our employees, but instead, are employees of the contractor. Any training is provided either by the contractor or by a law enforcement agency where the CSO had previously been employed.

It is anticipated that with personal services contracting authority, the Marshals Service will be in a position to scrutinize more closely the level of prior training received by each CSO and ensure specialized training is available to meet his needs.

Q. To what extent do U.S. Marshals exercise authority and control over CSO's in the CSO's performance of their security function?

A. Unfortunately, on a day-to-day basis, U.S. Marshals exercise virtually no control over CSO's. Under the existing contractual arrangement, the CSO is directed and supervised by the contractor, not the U.S. Marshal. The existing CSO contracts must--under current procurement regulations--have very definitive statements of work which are fairly inflexible. Only under a life-threatening situation may a U.S. Marshal actually direct a CSO in his duties. Otherwise, we have to go through the entire contract modification procedure. On a daily basis, this is terribly inefficient.

Q. How would S. 2044 improve the CSO program?

A. Personal services contracting authority would allow the

Service to save a substantial amount of taxpayer dollars by eliminating contractor middleman overhead and profit. Also, by granting the U.S. Marshal authority to direct and supervise CSO's, the Service could utilize the CSO work force more effectively to meet the security needs in the ever-changing environment of Federal court facilities.

Finally, personal services contracting authority would allow the Service to exercise high quality control standards at the individual level rather than the group level mandated by current contract procedures.

Q. Before the CSO program was inaugurated in 1982, how was security provided for U.S. Courthouses?

A. Prior to the Court Security Officer program, courthouse security was haphazard, at best. There was no single agency responsible--the U.S. Postal Service (USPS) claimed responsibility for their Post Office buildings which contained court facilities, and the General Services Administration (GSA) claimed responsibility for the rest. However, the judges always called the U.S. Marshal when there was a problem. Usually, the Marshal was powerless to correct the situation if GSA or USPS weren't cooperative.

Virtually the only way courthouse security was provided by these agencies was at additional costs. Either the Marshals Service or the Administrative Office of U.S. Courts (depending on which agency had the funding that year) had to give funds to GSA or USPS for guards to be posted in the facility. The poor quality of the guards provided and the lack of a central, nationwide authority for court security led to the formation of the Attorney General's Task Force on Court Security. As a result of the Task Force's recommendations,

the Attorney General sought a delegation of authority from the General Services Administration to centralize that authority under the Marshals Service. That delegation led, in turn, to the creation of the Court Security Officer program.

Q. Since the inception of the CSO program, how would you assess the performance of CSO's, in general?

A. Overall, I would have to rate the program as outstanding. There is absolutely no doubt in my mind that our CSO's have saved lives--the lives of judges and other employees.

Just as recently as Wednesday, August 20, 1986, a CSO in Fargo, North Dakota, detected the presence of a live bomb that was in the process of being delivered to a Federal judge. Although the bomb was safely deactivated, it was discovered to have been sufficiently designed and constructed to kill those present when the package was opened normally.

This is not an isolated case--there are other instances around the country where CSO intervention has saved lives. Even so, the saving of a single judge justifies the program in my mind.

Q. Have any Federal judges, attorneys, jurors, witnesses or trial spectators been killed or injured while under the protection of CSO's?

A. First, it's important to clarify the distinction between CSO's and Deputy Marshals. CSO's provide general facility and perimeter security at court facilities, while Deputy Marshals provide security inside the courtroom, and personal protection for threatened judges and other

judicial officers. Thus, Federal judges, attorneys, jurors, etc., are actually under the protection of Deputy Marshals.

In answer to the question, no, there have not been any deaths or injuries while CSO's were providing perimeter security at court facilities. However, as I indicated earlier, there would have been problems if CSO's had not been present. The presence of CSO's has definitely saved lives.

Q. Have any other acts of violence occurred in Federal courthouses under the protection of CSO's?

A. Yes--CSO's have assisted in preventing prisoners from escaping in courthouses, have stopped many persons from bringing weapons into the courthouse, and have quelled disturbances in and around court facilities. Many of these incidents are interesting but too numerous to explain here. However, if you wish, I'll be happy to provide them to you for the record.

Q. Does the Service have any statistics on the number of acts of violence prevented or weapons confiscated by CSO's?

A. A sampling of nine districts reveals the following for the first 7 months of FY 1986:

	WEAPONS DETECTED	CONTRABAND DETECTED
Hawaii	915	--
Nevada	1,053	281
S/California	10,064	686
E/Missouri	1,180	--
E/California	1,968	143
E/Louisiana	3,416	168
Arizona	397	536
Idaho	7	45
E/Pennsylvania	<u>3,120</u>	<u>550</u>
TOTALS	21,520	2,409

ACTUAL COSTS

S. 2044 would authorize the Marshals Service to collect fees for its services based on "the actual and reasonable cost" of the services.

Q. Would all fees collected under S. 2044 offset the costs to the Marshals Service of private process serving?

A. Approximately 70 percent of the private process served by the Marshals Service is on behalf of paupers who are not required to pay a fee for the service. Some of the expenses for pauper service may, however, be offset by the commissions collected in private admiralty cases.

Q. Do you have any statistics showing how much the current fee system is costing the American taxpayer?

A. In 1985, the Marshals Service served almost 90,000 pieces of private process at a cost of \$1,379,500 to the American taxpayer.

WITNESS PROTECTION

Q. S. 2044 authorizes payment of expenses incurred by the Marshals in providing facilities for witness protection, including the construction and renovation of buildings as witness safesites. Has the Service experienced any difficulty providing for payment for such witness safesites in the past?

A. There has been no difficulty providing payment for witness safesites in the past. However, the intent of proposed Section 573 is to incorporate within the Marshals Service appropriation the authority to pay witness security expenses. The Marshals Service is responsible for the

security and maintenance of protected witnesses whose lives are placed in jeopardy as a result of their cooperation with the government. The protected witness decision unit of the Fees and Expenses of Witnesses appropriation provides funds for the witnesses' financial maintenance to include: subsistence expenses; housing; medical and dental expenses; travel; documentation expenses for identity changes; one-time relocation; costs for obtaining employment; and other miscellaneous expenses. At the same time, the Salaries and Expenses of Marshals appropriation provides funds for the expenses of the Witness Security Inspectors who perform protection and all Program services made available to the protected witnesses. Because of the close relationship between these two accounts, this consolidation is logical to lessen the administrative burden placed on the Marshals Service of justifying two separate appropriations, accounting for similar expenditures in two separate accounts, and projecting future budgetary requirements in two accounts. In essence, this transfer is a logical management step to consolidate the two accounts.

FACILITIES FOR FEDERAL PRISONERS

- Q. How would S. 2044 assist the Service in providing detention facilities for Federal prisoners awaiting trial or transportation to Federal Correctional Facilities?
- A. A program which has had a major beneficial impact on the ability of the Marshals Service to provide for the adequate detention of unsentenced Federal prisoners is the Cooperative Agreement Program (CAP). Begun in 1982, this program allows the Marshals Service to enter into negotiated agreements with the state and local governments for the necessary

renovation or construction of detention facilities in exchange for guaranteed bed space for the Federal prisoners for a specified time period. The amount of funding is based on the number of guaranteed beds provided for Federal prisoners.

S. 2044 will be of some benefit to the Cooperative Agreement Program in the sense that it will permanently authorize the program in the budgetary preparation process. As a result, the program would no longer be treated as a new program initiative each year and would have an annual base level of funding.

However, the Department of Justice is at present facing a severe jail space crisis, the successful resolution of which will require significant increases of funds for jail space construction and operation for the Bureau of Prisons' budget, as well as significant increases in the annual funding for the CAP. The current annual CAP funding of \$4-5 million will be insufficient to address our housing needs for the future. The Service has seen its average daily prisoner population grow 43 percent since the Comprehensive Crime Control Act in 1984. The Administration's War on Drugs and other new law enforcement initiatives have and will continue to significantly impact on Federal detention space needs in the short and long run.

We currently estimate that a total of 6,280 guaranteed bed spaces will be required within the next 10-15 years. Without adequate detention space in Federal court cities, the Federal courts and law enforcement activities would be unable to function, and this would threaten the entire Federal judicial process.

AIRCRAFT

Q. S. 2044 authorizes the Marshals Service to acquire and operate aircraft. Does the Marshals Service presently own and operate any aircraft? If so, how many and for what purposes are they used?

A. The Marshals Service owns and operates aircraft in order to transport prisoners. The Service is responsible for: (1) producing Federal prisoners for legal hearings or meetings with counsel; (2) producing prisoners for trials; and (3) moving sentenced prisoners to institutions to serve sentences and transferring sentenced prisoners between institutions. Short-distance prisoner movements are routinely completed by District personnel in cars and vans.

A major portion of long-distance prisoner movements are accomplished through the National Prisoner Transportation System (NPTS), which is composed of Marshals Service aircraft with supporting bus and feeder systems. Marshals Service aircraft consists of a Boeing 727 (obtained by the Service at no cost from the Federal Aviation Administration through the surplus property program) and eight single engine and cabin-class twin engine airplanes. These are augmented as necessary by chartered small aircraft, air ambulances and scheduled commercial aircraft. More than 100,000 prisoners are transported annually by the Marshals Service via air and ground systems.

By centralizing prisoner movements, the NPTS has proven to be the safest and most economical way to move prisoners. For example, in FY 1982, the average cost to move a prisoner using commercial air flight was \$697 and \$896 for charter

aircraft. In FY 1985, using the NPTS airlift, the cost was reduced to \$200 per prisoner.

FIST OPERATIONS

Q. What resources have been allocated for Fugitive Investigative Strike Team (FIST) operations in the FY 1987 budget? Based on that allocation, how many FIST's can you operate in 1987?

A. The Marshals Service appropriation contains base funding of a little under \$1 million for FIST operations. There are no program increases in 1987 for this program.

The most recent two FIST operations cost \$3,545,264 and \$1,735,569, respectively, with cost often dictated by the locale targeted by the operation. However, after nine successful operations, the average cost per arrest remains an economical \$754. Available funding would not permit the conduct of any of the large scale operations which to date have resulted in a total of 14,770 arrests. Rather, the Marshals Service would be forced by available funding to conduct a very limited number of mini-FIST's having lesser geographic impact and uncertain cost per arrest projections.

QUESTIONS SUBMITTED BY SENATOR STROM THURMOND (R-S.C.)
CONCERNING S. 2044
THE UNITED STATES MARSHALS SERVICE ACT OF 1985
AUGUST 13, 1986

QUESTIONS FOR STANLEY E. MORRIS
DIRECTOR, U.S. MARSHALS SERVICE

1. Q. S. 2044 has been criticized by some who allege that its passage will jeopardize courtroom security as Federal

judges will be stripped of their statutory and discretionary authority to command the presence of Marshals in the courtroom. Would you comment on these concerns?

- A. It is the presence of Deputy U.S. Marshals that ensures courtroom security, not the judges' current authority to command such presence. The Marshals Service fully intends to continue to provide Deputy Marshals for security in the courtroom when justified. The only change sought in this regard is the official authorized to determine whether Deputy Marshals are needed. The United States Marshal is the person designated responsible for judicial security. The Marshal is also the person best qualified to assess security needs and balance those needs against his available resources.

We have no objection whatever to the presence of a Deputy Marshal when there is a law enforcement purpose to be served. In fact, the policy under which the Marshals Service operates, jointly established by the Chief Justice and the Attorney General and endorsed by the Judicial Conference, provides for the presence of Marshals Service personnel in any judicial proceeding where security is required. Under that policy, not a single Federal judge has been attacked or injured in a courtroom.

Beyond that, however, is the fact that those judges who unnecessarily demand the presence of a Deputy Marshal run the risk of jeopardizing the safety of judges who are conducting high-threat trials.

There are currently, for example, 15 major trials underway across the country involving drug cartels and narco-terrorists. These 15 trials involve 237 defendants, 80 of whom are in Marshals Service custody. The security requirements in

these trials are very real! In order to provide the necessary Marshals Service personnel to guard and transport the prisoners and insure the safety of the courts, we must temporarily assign Deputy Marshals from other districts around the country to the localities where these sensitive trials are being held. At the same time, the normal, everyday business in every district must go on.

If judges require our Deputy Marshals to attend sessions of court where no security requirement exists, we do not have the manpower to assign where there are real needs.

2. Q. The Federal court judge with jurisdiction over a vacant Marshal's position currently makes the interim appointment. The bill would allow the Attorney General to make the interim appointment. Why does the U.S. Marshals Service believe that the Attorney General should make the interim appointments as opposed to the appropriate court with jurisdiction?

A. When the office of U.S. Marshal was created 197 years ago and for a long time thereafter, the Marshal was often the only law enforcement officer of the Federal Government within hundred of miles, and communications between the judicial districts and the President were very slow and difficult. It was necessary that there be some method of temporarily filling a vacant Marshal position very quickly.

Even though it is an anomalous procedure for the Judicial Branch to select officials to serve in the Executive Branch, it was necessary under those primitive conditions to provide for an interim appointment by the court, which relied on the Marshal for functions essential to the operation of the justice system in that district.

Those conditions no longer prevail in this era of almost

instant communications. Officials in the Department of Justice are kept fully aware of circumstances in each of our district offices and can promptly take the steps necessary to assure their continuing, efficient operation. In addition, this practice of one co-equal branch of government selecting the officials of another branch tends to perpetuate the confusion that seems to exist in some quarters regarding the Marshals Service's position within the Executive Branch.

It should also be noted that the Judicial Conference of the United States has formally endorsed the appointment by the Attorney General of Acting Marshals.

3. Q. S. 2044 would allow the Director of the U.S. Marshals Service, who is appointed by the Attorney General, to exercise authority over marshals who are appointed by the President. This will result in giving an appointee of the Attorney General authority over a Presidential appointee. Do you anticipate problems with this anomalous situation created by S. 2044?

A. During the development stages of the proposal, we had considered proposing that the Director be appointed by the President with the advice and consent of the Senate. In fact, the Attorney General was supportive of that concept. However, some divergent views emerged late in the process and, rather than further delay the submission of the legislation to Congress while the issue was resolved, we agreed to withdraw that proposed change.

In my personal opinion, it is clearly anomalous for an Attorney General-appointed director to exercise policy and administrative direction over 93 Presidentially-appointed U.S. Marshals.

Senator DENTON. We now call on the Honorable William S. Sessions, chief judge of the U.S. District Court for the Western District of Texas. Judge Sessions is also chairman of the Subcommittee on Judicial Improvements of the Committee on Court Administration of the Judicial Conference of the United States.

Welcome, Judge Sessions. Your complete prepared statement will be placed in the record, and we will ask you to take no more than 10 minutes for your remarks at this hearing.

STATEMENT OF HON. WILLIAM STEELE SESSIONS, CHIEF JUDGE, U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AND CHAIRMAN, SUBCOMMITTEE ON JUDICIAL IMPROVEMENTS, COMMITTEE ON COURT ADMINISTRATION, JUDICIAL CONFERENCE OF THE UNITED STATES

Judge SESSIONS. Thank you, Mr. Chairman. It is a pleasure to be back in this beautiful room. I have not been here since December 1974, the confirmation hearing, and it is delightful to be back.

I would like to give you some indication of the persons who serve on the Subcommittee on Judicial Improvements of the Committee on Court Administration, as well as the members of the Committee on Court Administration, because I think it will give you some flavor of the places from which these persons have come who considered this particular legislation.

It, to me, is significant that there are persons on those committees from districts all over the country, and they come from the third, the fifth, the sixth, the seventh, the ninth, and the Federal circuits as circuit judges.

Additionally, there are judges, as I indicated, literally from all over the country. The subcommittee itself that dealt with the language of S. 2044 includes Judge Arnold from the eighth circuit; Judge Bilby, the chief judge of Arizona; Judge Hall, who is from California and on the ninth circuit; Magistrate Hornby from Maine; Bankruptcy Judge McGuire from New York; and Judge Weis from Pennsylvania, who sits on the third circuit.

Additionally, as I am sure you are aware, the chairman of the Committee on Court Administration is the Honorable Elmo Hunter.

In dealing with the language that is involved in this particular statute, I appreciate the Chair allowing these remarks to be printed in their totality in the record of the committee hearing.

Senator DENTON. Without objection, so ordered.

Judge SESSIONS. Thank you, sir.

I would like to turn to page 4 of those prepared remarks and read from there a portion of that for the understanding of the people who are gathered here generally and for the Chair.

As relates to recent Conference policy action—and I would emphasize, Mr. Chairman, that I am here only as the chairman of the Judicial Improvements Subcommittee and that the report of the subcommittee was acted upon by the Committee on Court Administration, but has not been acted on, of course, by the Judicial Conference of the United States.

It will, as you know, meet in late September and will review the action of both the committee and the subcommittee.

In the late 1970's, judges began to realize that the range of responsibilities borne by the Marshals Service and increasing demands facing the Service were problems of serious concern for the judiciary, as well as for the executive branch.

Too much work, limited manpower, and limited financial resources were having an impact upon the long-established and familiar working relationships between our courts and the marshals' offices across the Nation. The judiciary worked with the Department of Justice to respond to these problems where we believed we could make constructive contribution.

In March of 1981, the Judicial Conference supported the efforts of the Department of Justice to obtain amendments to the fee statute and, in March 1982, the Conference endorsed legislation authorizing the Attorney General of the United States to appoint an interim U.S. marshal when there is a vacancy in that office. And, of course, you have spoken with the Director of the Marshals Service about that just a few moments ago.

On March 11, 1982, the Chief Justice and the Attorney General issued a joint statement on Federal judicial security services during the March proceedings of the Judicial Conference.

That joint statement, which is attached here, announced the recommendations of the Attorney General's Task Force on Court Security, a task force formed by the Attorney General in July 1981 to examine court security requirements, had been adopted and would be implemented as rapidly as possible. Copies of that report have also been made available to this subcommittee's staff.

The purpose of the report was to delineate procedures and criteria for judicial branch utilization of Marshals Service resources which would improve efficiency; reduce, where possible, reliance upon marshal services; and yet preserve and, ideally, enhance essential security-related services.

One key element in the new approach to resource allocation fashioned by the task force was reliance upon the judicial district level court security committees.

Because both the Marshals Service and the judiciary function primarily at a decentralized district level in terms of court-related services, the task force recommended identifying individual courts' needs at the district level, and including the U.S. Marshals Service for that district and the U.S. attorney's office for that district. And, of course, that security committee functions in our district effectively, meets monthly, and does, in fact, carry out that particular service.

One major focus of the task force report was to establish criteria for the presence of a deputy U.S. marshal in court for security purposes based on four levels of anticipated risk, and those are set out, of course, in the report.

While a marshal would not be present at low-risk proceedings, higher risk levels could dictate the presence of one or more marshals. In March 1982, I am informed that the Judicial Conference resolved that the judicial councils of the circuits should "maintain oversight of the implementation of the recent Attorney General's task force report on court security."

In early 1984, the Marshals Service surveyed U.S. marshals' offices in an effort to assess how well the task force guidelines were

working. The survey found that approximately one-third of the active district judges continued to require the presence of a deputy U.S. marshal at low-risk proceedings.

In addition, some judges, although abiding by the task force recommendations, expressed disagreement with the limitations imposed on the use of U.S. marshals. Responding to those concerns voiced by individual judges about court security, Judge Hunter informed the September 1984 Judicial Conference that the Court Administration Committee "had reviewed the task force report and the issues raised, and had concluded that under present budgetary limitations, it is not possible to provide a law enforcement officer in each courtroom in every case without regard to the real need for security."

Upon the recommendation of the committee, the Conference reaffirmed at that time in 1984 that,

No U.S. marshal shall be required to be in a courtroom except for security purposes, in accordance with the joint statement of the Chief Justice and the Attorney General and the report of the Attorney General's Task Force on Court Security which the joint statement adopts.

The Marshals Service also responded to concerns voiced by individual judges. In cooperation with the Judicial Conference, the Marshals Service implemented a pilot project in three judicial districts to test the use of contract court security officers in low-risk proceedings, which, of course, has been discussed by Director Morris.

In September 1985, last fall, the Judicial Conference, on recommendation of the Committee on Court Administration, endorsed that project, saying,

Subject to the policy approval of the Court Security Committee, at the request of a judicial officer, court security officers may be used as a security presence in low-risk courtroom proceedings which do not warrant the presence of a deputy U.S. marshal under the risk criteria established by the Attorney General's Task Force on Court Security, where such assignments will not detract from judicial area or perimeter security.

This policy does not authorize the addition of extra court security officers beyond the number needed for courthouse security.

In other words, they could be taken and utilized from the perimeter and placed in courtroom responsibility.

Unfortunately, as you know, the program had to be discontinued because of budgetary constraints.

Now, as to the judicial response to S. 2044; early in December of last year the Justice Department formally transmitted to the Congress the draft legislation which Chairman Thurmond introduced as S. 2044 on February 4, 1986.

I will tell you that that particular bill made its way into the Judicial Improvements Subcommittee in April of this year.

Continuing on page 7, many judges found the modifications to the authority currently contained in 28 U.S.C., at best, unsettling. Even judges who agree with the general criteria established in the task force report for determining when a deputy marshal should be present for court proceedings found the new provisions inadequate.

Those judges correctly noted that guidelines are simply guidelines, a frame of reference for each individual judicial district's

court security committee to use in establishing ordinary and routine standards for security services.

During the Judicial Conference's March 1986 proceedings, the consequences of Gramm-Rudman-Hollings were of major concern. The Conference fashioned both immediate and future approaches to respond to resource reduction consequences of budget adjustments mandated by that legislation.

In connection with this legislation, as Director Morris indicated, he, in fact, has worked with the Judicial Improvements Subcommittee and the Committee on Court Administration, and was, in fact, present at the Committee on Court Administration's meeting in July of this year.

He agreed to work on language. He agreed to modify language, where appropriate. And, of course, you now know that you have before you, on page 9 of the testimony which I have submitted, the proposed amendment which would, in fact, meet the approval of the Judicial Improvements Subcommittee and the Committee on Court Administration.

I would say, as an aside, that the proposed amendment does not include language which may be testified to by Judge Bowen in his testimony here this morning. Judge Bowen suggested after the committee had met in July that it might want to add some part of 569(a) which had not been included before.

That language which he suggests is that 569(a) be incorporated under the 566 section to say the following:

The United States marshal of each district is a marshal of the district court and of the court of appeals when sitting in his district, and of the Court of International Trade holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York.

Now, aside from the other testimony which I have given in the report which has been filed, that concludes my presentation to you. I would say one thing further, Mr. Chairman, as an aside about this particular judge who appears before you.

I have suffered directly the consequences of serious assaults upon the judiciary. As you know, the Honorable John H. Wood, Jr., was, in fact, a judge who was assassinated on March 29, 1979, in the western district of Texas. That is not the only occurrence of an assassination attempt upon a judge.

The Honorable Walter Smith, of Waco, had an attempt made on his life approximately 1½ years ago by shots being directly fired at him.

Neither of these were courtroom incidents. But, of course, I know, as a chief judge, the consequences of these acts as they relate directly to the ability of a court to handle its responsibilities under the statutes and under the Constitution of the United States. The impairment by that kind of action is, of course, unfathomable.

I appreciate being able to be here today and I am ready to respond to whatever questions you may have.

Senator DENTON. Thank you very much. That was comprehensive testimony, Judge Sessions.

Do you generally agree, and does the Judicial Conference agree with the direction of S. 2044 in establishing the Marshals Service as a bureau within the Justice Department and enhancing the professionalism of the Service as it now exists?

Judge SESSIONS. I think you could say that, certainly, the Judicial Improvements Subcommittee, and it may be possible that the Judicial Conference itself, does feel that the enhancement of those capabilities is appropriate.

This is not the same Marshals Service that existed 20 years ago. You know and I know that since 1969, the enhancement of the professionalism of the Marshals Service has been considerable and very concrete.

The concern, I would think, of the Judicial Conference comes at the point of where do these new procedures and these new responsibilities—where do they detract from and where do they affect directly the ability of the Marshals Service to carry out its prime responsibility, as the Director indicates; that is, the security of the courts?

I would think there is always room for discussion.

Senator DENTON. What do you think of the suggestion by some Federal judges that the management of the court security function be taken over by the courts, by private arrangement?

Judge SESSIONS. Well, as I understand it, the Judicial Conference has spoken on that before. I was trying to find for you the particular reference to their prior action, and I think I can find it here in a moment.

Mr. Weller, will you assist me just a moment in finding the history of that?

Senator DENTON. You can provide your answer for the record, Judge Sessions, if you would care to.

Judge SESSIONS. If you would allow me to do that?

Senator DENTON. Surely.

Judge SESSIONS. You recognize, Mr. Chairman, I am at some disadvantage because I am not a member of the Judicial Conference. I have never served on the Judicial Conference. I am but a chairman of a subcommittee, and familiarization with policy of the Judicial Conference has been somewhat awkward for me.

Thank you. I will do that promptly.

Senator DENTON. Thank you, sir.

As you know, some judges have criticized S. 2044, seeing it as taking away their right to compel marshals to attend court. The compromise amendment which you and Director Morris have described does provide, however, for the establishment of policies under which marshals may be required to attend court.

Do you believe that that amendment provides adequate assurance to judges that marshals will attend sessions of court, when necessary?

Judge SESSIONS. Mr. Chairman, I am convinced it does. I know that there is no more precious commodity to any of us than the independence of the judiciary, and that is the ability, among other things, to be able to provide for its own security.

If it is not able to do that where it perceives the need for security, then we would be badly impaired. The amendments that we propose and which are part of the statement do, in fact, give to the Judicial Conference of the United States the ability to establish those policies that will, in fact, assure that the courts can adequately meet their security needs through the services of the U.S. marshal, and I think it does it very adequately; yes, sir.

Senator DENTON. You have explained that each Federal court district has a court security committee which identifies individual court security needs. Do these court security committees include Federal judges from the districts, and do the judges participate in decisions regarding the security requirements for civil trials?

Judge SESSIONS. I can speak to the court security committee in the western district of Texas. It meets monthly, every month. There will be a meeting, for instance, this Friday.

It will consist of not only the U.S. marshal. I, as the chief judge, will attend. The chief bankruptcy judge attends. The U.S. attorney attends, and there are practical, day-to-day security problems that are discussed on a routine basis.

It generally requires us, Mr. Chairman, approximately an hour-and-a-half to dispose of our business. We are talking about nuts-and-bolts problems, courtroom security throughout the district. Not only the U.S. district court, but, as you know, the U.S. bankruptcy court is now a unit of that court in the law that has been recently passed.

All those matters are areas of concern and we deal directly with them. And, yes, our security committee is a very important part of our own business. If we did not do it, I think we would be hard-pressed to complain to the U.S. marshal concerning an inadequacy of security at any level, and their responsiveness to our needs is very quick and on a continuing basis.

Senator DENTON. Thank you very much, Judge Sessions. We may have written questions for you which we will submit for your prompt answers, if you will.

Judge SESSIONS. Well, I am honored that you have asked the views of the judiciary, and particularly of the Judicial Improvements Subcommittee, and it has been a pleasure to be here.

Senator DENTON. It has been most helpful. Thank you, sir.

Judge SESSIONS. Thank you.

[Judge Sessions' submissions for the record follow:]

PREPARED STATEMENT

WILLIAM STEELE SESSIONS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS

AND

CHAIRMAN
OF THE
SUBCOMMITTEE ON JUDICIAL IMPROVEMENTS
COMMITTEE ON COURT ADMINISTRATION
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

INTRODUCTION

Mr. Chairman, and members of the subcommittee, on behalf of the Judicial Conference of the United States, I want to thank you for scheduling this hearing today, and for inviting our comments concerning S. 2044, "The United States Marshals Service Act". I am appearing here today because I serve the Conference as Chairman of the Subcommittee on Judicial Improvements of the Conference's Committee on Court Administration. My evaluation of this bill began several months ago, when responsibility for formulating recommended views on the legislation on behalf of the Conference was assigned to the subcommittee.

The Judicial Conference manages most of its business by using a committee system similar to your arrangements in Congress. Most matters which are before the Conference for consideration at its biannual meetings each year reach the Conference as recommendations for action formulated by a Conference committee. I have appended to this statement a list of the Conference's committees and those who are serving on them.

The Subcommittee on Judicial Improvements reviewed S. 2044 at its meeting on May 27 and 28, and formulated recommended views for the consideration of the parent Committee on Court Administration. That committee reviewed those recommendations less than three weeks ago, when it met on July 28 and 29. Mr. Stanley E. Morris, Director of the Marshals Service, graciously accepted an invitation from the committee chairman, Judge Elmo B. Hunter, to appear and explain the need for the legislation. Judge Dudley H. Bowen, Jr., who is appearing here today, also appeared before the committee three weeks ago to express, on behalf of himself and many of his circuit and district court colleagues, apprehensions related to specific provisions in the legislation as

introduced. On behalf of the committee, I want to thank Mr. Morris and Judge Bowen for their contributions to the committee's deliberations.

Following their very constructive presentations, the committee formulated recommended views for consideration by the Judicial Conference, and unanimously approved a proposed amendment to S. 2044. Under traditional Conference procedures, recommendations formulated by a committee for subsequent Conference consideration are ordinarily not widely distributed, or "released," to individuals or entities outside of the judicial branch. Each committee chairman, however, may, at his or her discretion, authorize wider distribution. Judge Hunter has authorized, for purposes of this hearing, the full disclosure of the committee's action in relation to S. 2044, and copies of our recommended amendment were forwarded to Mr. Morris and Judge Bowen last week. While the Judicial Conference has not yet formally reviewed or acted upon the committee's findings and recommendations — and is not scheduled to do so until its meeting next month — Judge Hunter believes that all of our work to date should be available to you today. We conducted our review in a context framed by existing statutory authorizations and modifications in those provisions which would be effected by S. 2044, as well as existing Judicial Conference policy pronouncements on related matters. I believe a brief summary of that contextual framework may be helpful to you, both in your review of the bill and in your evaluation of the Court Administration Committee's recommendations.

BACKGROUND

Existing Statutory Provisions and Proposed Provisions in S. 2044

Under current law, the President, with the advice and consent of the Senate, appoints a United States marshal for each judicial district for a term of four years. 28 U.S.C. § 561. In the event of a vacancy in the office of United States marshal, the district court appoints a marshal to serve until the vacancy is filled. 28 U.S.C. § 565. The "United States Marshals Service Act" proposed in S. 2044 would statutorily establish the United States Marshals Service as a bureau within the Department of Justice under the authority of the Attorney General. United States marshals would continue to be Presidential appointees. The Director of the Marshals Service would be appointed by the Attorney General; would be authorized "to select, appoint, employ, and fix compensation for deputy marshals"; and would "supervise and direct the United States Marshals Service in the performance of its duties". Proposed 28 U.S.C. § 561. Proposed 28 U.S.C. § 562

would provide for the appointment of an acting marshal by the Attorney General in the case of a vacancy in the office.

Under current law the powers and duties of United States marshals of direct interest to judges are enumerated in 28 U.S.C. § 569:

569 Powers and duties generally; supervision by Attorney General

(a) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in his district, and of the Court of International Trade holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York, and may, in the discretion of the respective courts, be required to attend any session of court.

(b) United States marshals shall execute all lawful writs, process and orders issued under authority of the United States, including those of the courts and Government of the Canal Zone, and command all necessary assistance to execute their duties.

(c) The Attorney General shall supervise and direct United States marshals in the performance of public duties and accounting for public moneys. Each marshal shall report his official proceedings, receipts and disbursements and the condition of his office as the Attorney General directs.

The new "powers and duties" of United States marshals would be set out in proposed 28 U.S.C. § 566; the current language contained in 28 U.S.C. § 569 would be repealed. As amended, section 566 would provide in pertinent part:

566. Powers and duties

(a) The United States Marshals Service is authorized to provide for the safety and security of the Federal courts of the United States and provide other assistance in accordance with the policies established by the Attorney General.

(b) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process and orders issued under the judicial authority of the United States, in accordance with the policies established by the Attorney General, and shall command all necessary assistance to execute its duties.

The legislation would also, among other things, amend 28 U.S.C. § 1921 to allow the Attorney General to set fees collected by United States marshals in civil and criminal matters at levels reflecting the actual cost of those services. Current law sets those fees at specific low dollar amounts.

Recent Conference Policy Action

In the late 1970's judges began to realize that the range of responsibilities borne by the Marshals Service, and increasing demands facing the service, were problems of serious concern for the Judiciary as well as for the Executive Branch. Too much work, limited manpower, and limited financial resources were having an impact upon the long established and familiar working relationships between our courts and marshals offices

across the nation. The Judiciary worked with the Department of Justice to respond to those problems where we believed we could make a constructive contribution.

In March of 1981, the Judicial Conference supported the efforts of the Department of Justice to obtain amendments to the fee statute (28 U.S.C. § 1921), and in March of 1982, the Conference endorsed legislation authorizing the Attorney General to appoint an interim United States marshal when there is a vacancy in that office.

On March 11, 1982, the Chief Justice and the Attorney General issued a joint statement on federal judicial security services during the March Proceedings of the Judicial Conference. That joint statement (attached as an Appendix to this statement) announced that the recommendations of the Attorney General's Task Force on Court Security — a task force formed by the Attorney General in July of 1981 to examine court security requirements — had been adopted and would be implemented as rapidly as possible. Copies of that Report have been made available to this subcommittee's staff.

The purpose of the report was to delineate procedures and criteria for judicial branch utilization of Marshals Service resources which would improve efficiency, reduce where possible reliance upon the Marshals Service, yet preserve — and ideally enhance — essential security-related services. One key element in the new approach to resource allocation fashioned by the Task Force was reliance upon judicial-district-level "Court Security Committees". Because both the Service and the Judiciary function primarily at a decentralized district level in terms of court related services, the Task Force recommended identifying individual courts' needs at the district level — and including the United States Marshal's Office for that district, and the United States Attorney's Office for that district, in the process.

One major focus of the task force report was the establishment of criteria for the presence of a deputy United States marshal in court for security purposes based on four levels of anticipated risk: while a marshal would not be present at low risk proceedings, higher risk levels could dictate the presence of one or more marshals. The March, 1982, Judicial Conference resolved that the judicial councils of the circuits should "maintain oversight of the implementation of the recent Attorney General's Task Force Report on Court Security".

In early 1984 the Marshals Service surveyed United States Marshals Offices in an effort to assess how well the Task Force guidelines were working. The survey found that approximately one-third of the active district court judges continued to require the presence of a deputy United States marshal at low risk proceedings. In addition, some

judges, although abiding by the task force recommendations, expressed disagreement with the limitations imposed on the use of marshals. Responding to concerns voiced by individual judges about court security, Judge Hunter informed the September, 1984 Conference that the Court Administration Committee "had reviewed the task force report and the issues raised and had concluded that under present budgetary limitations it is not possible to provide a law enforcement officer in each courtroom in every case without regard to the real need for security". Upon the recommendation of the committee, the Conference reaffirmed its belief that:

[N]o United States Marshal shall be required to be in a courtroom except for security purposes, in accordance with the joint statement of the Chief Justice and the Attorney General and the report of the Attorney General's Task Force on Court Security which the joint statement adopts.

The Marshals Service also responded to concerns voiced by individual judges. In cooperation with the Conference the Marshals Service implemented a pilot project in three judicial districts to test the use of contract court security officers in low risk proceedings. In September of 1985 the Judicial Conference, on recommendation of the Committee on Court Administration, endorsed that project:

Subject to the policy approval of the Court Security Committee, at the request of a judicial officer, court security officers may be used as a security presence in low risk courtroom proceedings which do not warrant the presence of a deputy U.S. marshal under the risk criteria established by the Attorney General's Task Force on Court Security, where such assignments will not detract from judicial area or perimeter security.

This policy does not authorize the addition of extra court security officers beyond the number needed for courthouse security.

Unfortunately, that pilot program has had to be discontinued for budgetary reasons.

JUDICIAL REACTIONS TO THE INTRODUCTION OF S. 2044

In early December of 1985 the Department of Justice formally transmitted to Congress the draft legislation which Chairman Thurmond introduced as S. 2044 on February 4, 1986. A "companion" House bill, H.R. 4001, had been introduced by Congressman Kastenmeier on December 19, 1985. The growing concern expressed by many judges over reductions in services by the Marshals Service — especially changes in long-established traditions of deputy marshals being present in courtrooms during judicial proceedings — rapidly focused upon provisions included in the new bill as proposed subsections (a) and (b) of a new section 566 of title 28, quoted earlier in this statement. (See bill print, at page 6, line 18 thru page 7, line 2.)

Many judges found the modifications to that authority currently contained in 28

U.S.C. § 569 (a) and (b), at best, "unsettling". Even judges who agreed with the general criteria established in the Task Force Report for determining when a deputy marshal should be present for court proceedings found the new provisions inadequate. Those judges correctly noted that "guidelines" are simply "guidelines" — a frame of reference for each individual judicial district's "Court Security Committee" to use in establishing ordinary and routine standards for security services. Under existing language in subsections 569(a) and (b) of title 28, individual judges hold clear authority to act in exceptional circumstances and in situations in which reasons exist to depart from routine standards for services — and they perceive a clear need to retain that authority.

During the Judicial Conference's March 1986 Proceedings the consequences of the Gramm-Rudman-Hollings Act were a major matter of concern. The Conference fashioned both immediate and future approaches to responding to the resource reduction consequences of budget adjustments mandated by that legislation. In the discussions associated with that action, attention was focused upon the consequences of the Act for the Marshals Service, and specifically upon the problems individual United States Marshals Offices would encounter in providing services to the courts.

Two weeks later, at the March 1986 meeting of Metropolitan Court Chief Judges, while Mr. Morris was present, serious concerns were expressed over the proposed repeal of the existing section 569 authority. On April 8, 1986, Mr. Morris wrote to all of the chief judges of the district courts "to assure you that it is not the intent of the Administration to diminish our responsibilities to the court in any way". Director Morris further stated that "Protecting the integrity of the judicial process and providing for the safety of the judiciary is — and will continue to be — the primary mission of the U.S. Marshals Service." He agreed to work with the Conference and the Administrative Office to "adjust the language" of the Administration's draft to meet the Judiciary's concerns. The Judicial Improvements Subcommittee was assigned responsibility for working with the Marshals Service on that project.

In order to assist the subcommittee in its consideration of this matter, the Director of the Administrative Office, by letter of April 10, 1986, invited all chief judges of the district courts to comment on the legislation. Eighteen district court chief judges responded, as did two chief judges of the courts of appeals and three individual district court judges. In addition, the United States District Judges Association for the Fourth Circuit, and the Judicial Councils for the Tenth and Eleventh Circuits, passed resolutions dealing with court security.

After reviewing all the comments conveyed in those communications the subcommittee concluded, unanimously, that judicial officers should continue to be empowered to require the attendance of United States marshals in court for security purposes, provided they do so in accordance with policies established by the Judicial Conference of the United States. It was also the consensus of the subcommittee that it would be inappropriate to allow the Attorney General to control the manner in which "all lawful writs, process and orders issued under the judicial authority of the United States" are executed. The subcommittee fashioned a proposed amendment to proposed section 566. I presented that proposed amendment to the Court Administration Committee on July 29, and the committee, after slightly revising its phraseology, unanimously approved the amendment in the following form:

AMENDMENT

To amend proposed section 566 of title 28, United States Code, as now printed in the February 4, 1986 introductory print of S. 2044.

At page 6, lines 18-21, strike out proposed subsection (a) and at page 6, lines 22-25, and page 7, lines 1-2, strike out proposed subsection (b), and insert in lieu thereof the following:

(a) The United States Marshals Service shall provide for the safety and security of the Federal courts of the United States, including, but not limited to, the protection of the courtroom, prisoners, juries, judicial chambers, and protection of the judiciary. In accordance with the policies established by the Judicial Conference of the United States, United States Marshals may, in the discretion of the respective courts, be required to attend any session of court. The United States Marshals Service shall provide other assistance in accordance with the policies established by the Judicial Conference of the United States after consultation with the Attorney General.

(b) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process and orders issued under the judicial authority of the United States and shall command all necessary assistance to execute its duties.

CONCLUSION

In summary, Mr. Chairman, while the Court Administration Committee's recommended amendment has not yet been endorsed by the Judicial Conference, it does reflect the best efforts of the Conference as of this moment to respond to heartfelt and real concerns expressed by many judges. We all know that more efficient resource utilization is imperative. We are responding to the need. Yet, all our legal analyses to date have confirmed the conviction of judges who are apprehensive of the repeal of existing provisions in 28 U.S.C. §§ 569(a) and (b): **there is no "inherent judicial authority" for judges to direct marshals to attend court and execute writs; only an express statutory authorization can confer such authority.** We believe our proposed amendment is a

reasonable and appropriate approach to providing that needed statutory authorization. We recognize the needs addressed by the bill in its entirety as important reforms which are properly being advocated by the Department of Justice. Mr. Morris has cooperated conscientiously with us in our efforts to fashion a remedy to the problem we perceive in S. 2044. I hope he, and you, will find our proposal acceptable.

APPENDIX A

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 Maurice Rosenberg
 Walter Jay Skinner
 Joseph F. Weis, Jr.
 Charles E. Wiggins
 Michael Zimmerman
 Paul D. Carrington, Reporter

Dis.J., Chicago, IL
 Esq., Washington, DC
 Esq., New York, NY
 Prof., Cambridge, MA
 Dis.J., Los Angeles, CA
 Prof., New York, NY
 Dis.J., Boston, MA
 Cir.J., Pittsburgh, PA
 Cir.J., San Francisco, CA
 AJust., Salt Lake City, UT
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Advisory Committee on the Criminal Rules

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 Frederick B. Lacey
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 Stephen S. Trott
 Stephen A. Saltzburg, Reporter

Sr.Dis.J., San Diego, CA
 Dis.J., Denver, CO
 Esq., Washington, DC
 FPD, San Francisco, CA
 Dis.J., St. Louis, MO
 Esq., Newark, NJ
 Esq., Washington, DC
 Dis.J., Atlanta, GA
 Mag., Jacksonville, FL
 Esq., New York, NY
 Justice Dept., Washington, DC
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Ad Hoc Committee on American Inns of Court

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 Prof., Washington, DC
 Dis.J., San Diego, CA
 Esq., Pearl City, HI
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Ad Hoc Committee to Monitor Regulations on Electronic Sound Recording

Collins J. Seitz, Chairman
 Robert R. Merhige

Cir.J., Wilmington, DE
 Dis.J., Richmond, VA

JOINT STATEMENT OF THE
CHIEF JUSTICE AND THE ATTORNEY GENERAL
BEFORE THE JUDICIAL CONFERENCE OF THE U.S., MARCH 11, 1982

The provisions of adequate security services to all the participants in the federal judicial system, most especially the Judiciary itself, is a critical element in the relationship between the Department of Justice and the Federal Courts. If we cannot ensure the safety of all participants in the judicial process, we cannot maintain the integrity of the system, we cannot - in sum - "establish justice," as mandated in the preamble to the Constitution of the United States.

This has not been an easy task in recent years, nor will it be a simple matter to accomplish in the future. The Department of Justice, and more specifically, the United States Marshals Service, is the agency vested with responsibility for the provision of court security services. In this time of fiscal austerity, both have been faced with budget reductions, funding uncertainties and reductions-in-force which have made the continued maintenance of security support at the levels sought by the Judiciary very difficult. Further, the fragmentation of responsibility between the United States Marshals (USMS) - responsible for court security - and General Services Administration (GSA) and the Postal Service - responsible for general facility and perimeter security - has made it difficult to orchestrate a concerted response to judicial needs. Finally, the use of contract guards by the General Services Administration - outside the control of the USMS - has only served to exacerbate judicial concern.

At the same time, the needs of the Judiciary as perceived by both the Judiciary and the United States Marshals have risen dramatically. This rise is due to the increase in the number of judges, the increase in the number of cases combined with the increasingly complex and sensitive nature of the cases and the people involved.

If we are to solve this problem, it will only be through mutual understanding of the difficulties we face and agreement - by all participants in the judicial system - to work together in resolving those difficulties. To that end, we have agreed to effect the following actions:

- The United States Marshals Service, in general, and each individual United States Marshal in each district, will assume primary responsibility and authority for the provision of security

services to the judiciary, as required. The Judiciary in each district will, therefore, have a single individual to whom it can look for all judicial security matters. To this end, the Attorney General is seeking an appropriate delegation of authority from the Administrator of the General Services Administration.

- In the short-term, the Attorney General, to the extent possible, will seek additional funding for court security including reallocating resources within the United States Marshals Service to return court security resources to the levels existing in FY 1979.
- We have adopted the recommendations of the Attorney General's Task Force on Court Security and will begin their implementation as rapidly as possible. The recommendations provide a reasoned and rational methodology for the provision of the security services in the courtroom, as well as general recommendations for the development of a comprehensive system of court security. These recommendations require the active involvement of all participants in the judicial system during the implementation phase if they are to be successfully utilized. We have, therefore, committed the full and active involvement of our respective organizations in this effort.
- Finally, the Chief Justice will recommend approval of the proposed amendments to Rule 4 (c) and (d) of the Federal Rules of Civil Procedure and encourage the adoption of local rules to relieve the United States Marshals from the responsibility to serve private civil process by the use of alternative methods of serving process. The Attorney General will continue to seek legislation to facilitate the development of such alternative methods, to compensate the government fully for process served, and to reduce the statutory obligation to serve most private civil process. As resources are saved by this action, they may, if appropriate be reallocated to the court security function on the basis of the experience we gain in implementing the recommendations of the Court Security Task Force.

While these actions should not be seen as a panacea, they do represent what we believe to be a useful beginning to the resolution of a critical problem. We seek the continued support of all participants in the judicial system in their implementation.

JUDGE SESSIONS' RESPONSES TO QUESTIONS OF SENATOR DENTON

JUDICIAL SECURITY

IT HAS BEEN SUGGESTED BY SOME FEDERAL JUDGES THAT THE MANAGEMENT OF THE COURT SECURITY FUNCTION BE TAKEN OVER BY THE COURTS.

WHAT IS YOUR OPINION OF THIS PROPOSAL?

In March of 1982, Judge Elmo Hunter advised the Judicial Conference that the Court Administration Committee had reviewed a recommendation of the American Bar Association's Judicial Administration Division's Conference of Federal Trial Judges to "transfer" the Service to the Judicial Branch--and "concluded that law enforcement of whatever nature is the responsibility of the Executive Branch of Government and, therefore, rejected the recommendation." March 1982 Proceedings at page 14.

During that same meeting of the Judicial Conference, legislation authorizing the Attorney General to appoint "interim" United States marshals was unanimously approved by the Conference, and the Task Force Report was adopted.

It appears to me that the Conference has consistently recognized the concept that security services should be provided by law enforcement officers serving under the supervision of the Executive Branch and not the Judicial Branch. The Conference has advocated a judicial role in identifying services needed and a role in controlling the provision of services. That is the purpose of the amendment which I offered to proposed Section 566. While individual judges have advocated a nationwide judicial branch security force in the Judicial Branch, the Conference has never approved that approach.

INTERIM APPOINTMENT OF MARSHALS

WHAT IS THE POSITION OF THE JUDICIAL CONFERENCE ON THE PROVISION OF S. 2044 WHICH GIVES TO THE ATTORNEY GENERAL, RATHER THAN THE DISTRICT COURT, THE POWER TO APPOINT A TEMPORARY MARSHAL TO FILL A VACANCY?

In March of 1982, the Judicial Conference of the United States unanimously approved that provision as then pending in an earlier bill, S. 1921, 97th Congress. The Conference expressly found the conferral of the authority upon the Attorney General to be "more in accord with the doctrine of separation of powers than the present system."

Also, please see my testimony of August 13 at page 29 concerning the same subject.

RECOMMENDATIONS FOR S. 2044

DOES THE JUDICIAL CONFERENCE HAVE ANY OTHER RECOMMENDATIONS FOR AMENDING OR IMPROVING S. 2044?

No. I have offered the Court Administration Committee's recommended amendments to proposed Section 566 and trust that that, in addition to my previous testimony, will clarify the position of the Committee.

MARSHAL SERVICE FEES

S. 2044 AUTHORIZES THE MARSHALS SERVICE TO CHARGE FEES FOR ITS SERVICES, SUCH AS PROCESS SERVING, BASED ON THE ACTUAL COST OF PROVIDING SUCH SERVICES.

DOES THE JUDICIAL CONFERENCE AGREE WITH THIS APPROACH?

Yes. As the March 1981 proceedings of the Judicial Conference indicate, the Judicial Conference supported the

efforts of the Department of Justice to obtain amendments to the fee statute. See page 29 of testimony of August 13, 1986.

COURT SECURITY

DO YOU AGREE WITH THE FLEXIBILITY WHICH S. 2044 PROVIDES TO THE MARSHALS SERVICE TO ENTER PERSONAL SERVICE CONTRACTS FOR THE PROVISION OF COURT SECURITY AND FOR THE SERVICE OF PROCESS?

Yes, I do, and I believe that the Committee on Court Administration and the Judicial Conference would agree.

It is my hope that at some time in the future there will be a special unit in the Marshals Service, funded by the transfer of appropriate funds from the judiciary's budget, devoted exclusively to court security services. It appears that resources are not now available, but supervision by the Marshals Service over contract services for security seems to be a first, logical step toward a fully professional unit within the Marshal Service devoted to meeting the needs of the judiciary.

Senator DENTON. The next witness is the Honorable Dudley H. Bowen, Jr., judge of the U.S. District Court for the Southern District of Georgia, who is representing the views of the Federal Judges Association today.

Once again, we welcome you, Judge Bowen. Your entire prepared testimony will be placed in the hearing record as if read. We ask that you try to confine your remarks to 10 minutes.

Before your testimony begins, rather than appearing to be rude, I should explain that a vote has been called on the floor, and I will have to depart for it. There may be another vote immediately after that. I also have a meeting which I cannot fail to attend.

In my absence, the staff director of the Subcommittee on Security and Terrorism, Joel Lisker, extremely well qualified, will conduct the questioning.

But thank you, Judge Bowen, for appearing. Please begin with your statement.

STATEMENT OF HON. DUDLEY H. BOWEN, JR., JUDGE, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA, ON BEHALF OF THE FEDERAL JUDGES ASSOCIATION

Judge BOWEN. Thank you, Mr. Chairman. Let me tell you before you depart that it is my pleasure and an honor for me to be here and I appreciate the invitation.

Senator DENTON. Well, thank you, sir. I know your testimony will be valuable.

Judge BOWEN. Mr. Chairman and members of the subcommittee, I am honored to be here this morning and to have a chance to respond to a few of the comments that were made, particularly those by Mr. Stanley Morris.

I would like to further my introduction somewhat by reminding the members of this committee and staff members that the Federal Judges Association is a national organization of article III judges of this country. It presently has a membership of about 450 article III judges. We think that it represents over one-half of the article III judges of this country who come from each of the States and all of the circuits. I wish we could say they came from all of the districts.

I want to——

Mr. LISKER. Excuse me, Judge Bowen. If you would like to be seated and it would be more comfortable——

Judge BOWEN. If it would not offend the members of the staff, I would rather stand.

Mr. LISKER. Fine.

Judge BOWEN. I have been seated for quite some time. Thank you very much, sir.

I am also speaking today individually, not only as a representative of the Federal Judges Association. Quite frankly, I got into my study of this matter well before the FJA took a position on this.

I am very happy and very proud to say that the Federal Judges Association has taken a position, and I am happy and proud as well to bring to this committee the well wishes of the Honorable Spencer Williams, the president of the FJA.

I would also like to take a minute to introduce a few folks: first of all, the Honorable Anthony A. Alaimo, who is the chief judge of the southern district of Georgia, who was able to be here today.

[Judge Alaimo stood.]

Judge BOWEN. I would like to introduce Judge Bill Acker, who is from the northern district of Alabama. He is here today, not at Government expense, to show his very keen enthusiasm and interest in this matter.

[Judge Acker stood.]

Judge BOWEN. I would like to introduce, also, Mr. Robert Brinton, a practicing attorney from White Plains, NY. Mr. Brinton is the executive director of an important corporate committee which deals with Federal judges on a daily basis and is quite interested about their concerns and the security of their courtrooms.

[Mr. Brinton stood.]

Judge BOWEN. I would also like to introduce Ms. Rhea Fox, who accompanies Mr. Brinton today. She also does some work with his committee.

[Ms. Fox stood.]

Judge BOWEN. I would like to tell you, first of all, that the Federal Judges Association and Dudley Bowen are not here to present an attack on anyone, any institution, any agency, any director, any marshal, or any deputy marshal. Quite frankly, the reason that I, other judges, and the FJA are so concerned about this legislation is the trust and dependency which we have gained throughout almost 200 years of excellent, well-trained service of the marshals in the courts. We feel very close to these people. We want to continue to have that relationship, and henceforth our great concern.

Nor is my statement today or my position or that of the FJA a request that the Congress of the United States provide us funding for the attendance of deputy marshals in all of our court sessions. I do not stand for that principle; I have not asked for it.

I think that the southern district of Georgia, while it is not a pilot project, is one of those few in the Nation which is actually using CSO's in the courtroom. I particularly am doing that on a regular basis. We are doing what we can to cooperate in that context.

I will tell you at the outset that, yes, we have had this memorandum of agreement between the Chief Justice and the Attorney General since 1982, March or April; I have forgotten the exact date of it.

I will also tell you, just as I would tell the Chief Justice if he were sitting next to the Chair of this subcommittee, that that memorandum was a great mistake. It is not working, and it is the cause of much of the mischief that is abounding in this country today. I do not know of any other single thing that has created the discomfort, the frustration and the desperation that this memorandum of agreement and the sequelae to it have caused.

In historical perspective, this U.S. Marshals Service has its very origins along with the courts. I am not going to repeat to this subcommittee anything about section 27 of the Judiciary Act of 1789, other than to say that the Marshals Service was created along with the article III courts.

Court security and court service is the sine qua non of the Marshals Service. We can talk all morning about guidelines and memorandums of agreement. Those things sound quite simple enough.

I do not have it with me on the table, but I can demonstrate to you in very short order that what we are dealing with there is not a one- or two-page guideline, so to speak. It is 45 pages of rather detailed written material that presumes by administrative fiat to tell the article III judges of this country when and when not they may have deputy marshals within the courtroom.

That, quite frankly, is an indignity to your article III judges. An article III judge should not have to debate with anyone, any agency, or any deputy marshal or marshal the fact of whether or not he or she perceives the need to have additional court security by way of the presence of a deputy marshal.

I cannot wade through either the 45 pages of written material or the effect of it in order to make that decision. We, the judges, know the witnesses; we know the parties, we know the lawyers, we know the problems of the case. We have had pretrial proceedings; we know what is happening in our courtrooms.

A great many of us, most of us who are my age or older, have had military experience. We are not fools about court security and we know when we need some.

When Mr. Morris made the comment that some positions on this subject were intemperate and uncompromising, that comment was probably directed to me. Quite frankly, I feel that I am speaking with the voice of history, with the voice of tradition, and with the voice of proven practice. And if that is the voice of intemperance or a failure to compromise, then I will readily plead guilty to it.

Many of us are opposed to the provisions of S. 2044, for these reasons: It creates within Washington a national police force. It creates a centralization of power in an agency which formerly had its power delegated or distributed throughout the 93 plus 1 districts of this Nation.

That is unseemly and uncalled for. It swims upstream, so to speak, in creating this centralization of power, where it appears to me that the mood of the country is dedicated toward a decentralization, if not dismantlement, of Government.

This legislation would eliminate the status of the U.S. marshal as an officer of the court. This is a matter which has been in the law for almost 200 years, and I have a degree of reverence for it.

The status of the marshal as an officer of the court was a provision put in the Judiciary Act of 1789 by the very people who wrote and ratified the Constitution. I cannot see it go without a strenuous protest.

This legislation, S. 2044, is an open-ended, nonspecific, blank-check grant of authority to the Marshals Service to do basically whatever its director can convince the Attorney General to assign to the Service.

This legislation will ratify and further encourage the assumption of new or other duties which conflict with the primary, basic role of the U.S. Marshals Service.

It appears to me, Mr. Lisker, that I am going over the time allotted by the Chair to other people. May I proceed?

Mr. LISKER. Certainly.

Judge BOWEN. Additionally, it is my personal view that the interim appointment of U.S. marshals by the Attorney General is not, as Mr. Morris said, likely to achieve the greatest consensus between the legislative branch and what happens in the field.

It is my very firm opinion that the judiciary of this Nation, being also nominated and confirmed by the Senate, is in a far better position to be responsive to the needs, the wishes, the thoughts and the policies of the legislative branch in the appointment of interim marshals than is any administration or the executive branch.

I would like to go back just for a moment to this memorandum of agreement, the Judicial Conference guidelines, so to speak, and restate my conclusion that it is not workable. If those guidelines were working, Mr. Chairman, I would pose the rhetorical question, why do I have in my hand, most of which were spontaneously written and sent to me, resolutions from the Federal Court Clerks Association, the National Conference of United States Magistrates, the Fourth Circuit Judicial Council, the District of Colorado, the Tenth Circuit Judicial Council, the Eleventh Circuit Judicial Conference, recommendations from 15 of the 17 Federal judges in Georgia, a similar number of Federal judges in Florida?

And why have the judges of the southern and middle districts of Alabama written to the Chair of this subcommittee expressing their concern about the need for the strengthening of 28 U.S.C. 569, as opposed to any enactment of S. 2044?

I would like to place in the record of this proceeding, if the reporter will permit me and if the Chair will permit me, a copy of these resolutions.

Mr. LISKER. Hearing no objection, so ordered.

Judge BOWEN. Thank you.

Also, I would like to tell you that I have the specific authorization from Federal judges strategically located in this country in the Southeast and elsewhere, and I would like to mention the names of a few.

One of them of particular interest to the Chair of this subcommittee is that of Judge Frank M. Johnson, of Alabama and of the Eleventh Circuit Court of Appeals, presently. Judge Johnson is opposed to any legislation which would weaken the present provisions of 28 U.S.C. 569, which S. 2044 certainly would.

I know of no one in the history of this country who has utilized the Marshals Service, the individual marshals and their deputies with greater positive effect than Judge Johnson, and I know of no one who is more aware of the problems which face trial judges today than he is.

I would also like to mention the names of Judge Frank Kaufman, of Baltimore; Judge Frank McGarr, of Chicago; Judge Hubert Will, of Chicago; Judge David Edelstein, of the southern district of New York; Judge Henry Bramwell, of the eastern district of New York; Judge Jim Carrigan, of Colorado; and the Honorable Anthony A. Alaimo, of Brunswick, who is with us today.

These are the types of judicial officers, trial judges, front-line soldiers of the judiciary who have great concern, and have shared it with me in a way consistent with my views about the enactment of S. 2044.

It is lamentable, as I have mentioned on page 18 of my prepared statement, that the General Accounting Office has brought to the attention of the Congress and this committee and subcommittee, as well, on April 19, 1982, in a 75-page report numbered GGD-82-3, concerns which are very similar to mine about what the role and duty of the Marshals Service should be.

It is very clearly set out and questions are asked and answered about the priorities of the Marshals Service and their basic role and duties. I would like to just take a moment and quote from a couple of paragraphs of that report.

Among other things, the Comptroller General has already told the Congress that the marshal is essential to the judicial process. They provide court security and enforce court orders to ensure the operational integrity of the courts.

I think it says it all on page 42 of that report when the Comptroller General concluded,

The point of this report is that there is a need to have an officer of the Executive Branch, marshals, whose basic mission is to uphold the functional integrity of the courts. Other Executive Branch agencies with different basic missions should not impose additional duties which are unrelated to and disrupt the performance of the marshals' basic mission.

Mr. Chairman, the very heart of this dispute is contained in the juxtaposition of present 28 U.S.C. 569 with section 566 of S. 2044. That section has been amply commented upon by my brother, Judge Sessions, and I will not belabor it.

I will tell you, however, that the sentiments expressed on behalf of the subcommittee that Judge Sessions represents are not entirely consistent with all judges and all legislators.

I would like to bring to the attention of this subcommittee another Senate bill which has been introduced on August 8 by Senator Nunn and Senator Mattingly, both of Georgia. I would also like to bring to the attention of this subcommittee the floor statement that accompanied the introduction of S. 2732.

If I may, I would like to hand it to the reporter and ask that this as well, this two-page item, be included in the record.

Mr. LISKER. Again, hearing no objection, so ordered.

Judge BOWEN. Thank you, sir.

Mr. LISKER. Judge Bowen, if you could bring your remarks to a close now?

Judge BOWEN. I will wrap it up, sir. I would be remiss, however, if I did not quote Senator Nunn. He said in that floor statement, "It is necessary to clothe the article III courts of this Nation with an unmistakable grant of authority on matters touching court security so that no one"—and I will interlineate, including the Chief Justice of the Supreme Court, the Judicial Conference or the U.S. Marshals Service, end of my interlineation—"will presume to alter the clear expression of Congress in this regard."

Mr. Chairman, the U.S. Marshals Service has one clearly defined statutory duty, and that is to serve the courts in the nature of the provision of court security and the execution of the orders of the courts.

We have a situation presently in which the part-time jobs of the U.S. Marshals Service have interfered with and, in some cases, caused the abdication of the basic duties of the Marshals Service.

I implore this subcommittee and the committee and this Senate not to pass S. 2044. Thank you.

Mr. LISKER. Thank you very much, Judge Bowen.

Judge BOWEN. I appreciate your patience.

Mr. LISKER. We are always pleased to have all views. Senator Denton especially wanted to give you full time to air your views because you, as the principal spokesman in opposition, should be heard.

You have suggested that the centralization of power in the Marshals Service would give rise to what you call a national police force. How is it different from the FBI or any other well-run Federal law enforcement organization?

Judge BOWEN. It is a great deal different, in that the U.S. Marshals Service was never conceived, and should not now be perceived, as a "national police force."

Mr. LISKER. Excuse me, Judge. Those are words that you used.

Judge BOWEN. Yes, sir.

Mr. LISKER. I do not think Judge Webster perceives of the FBI as a national police force.

Judge BOWEN. Well, perhaps not. May I call it national detective agency with any greater license? It is a national operation. It is not an NKVD; I do not suggest that it is. But it is an investigative police force.

Mr. LISKER. Well, it is a law enforcement agency which exists and was established at the Federal level to investigate possible violations of Federal law. In the interests of cost effectiveness and central direction and preserving the integrity of the agents, and so forth, by centralizing authority, it was set up that way.

But the FBI, if you will go back to when that was set up when Mr. Hoover was just a young man serving as a special assistant in the Justice Department, was never conceived to be a law enforcement agency in its present role when it was the Division of Investigation of the Justice Department, but times change.

Judge BOWEN. Well, I certainly do not want to become embroiled in a discussion of semantics here. My concern is the centralization. The U.S. marshals were conceived as policy-level representatives of the executive branch. They were not detectives or policemen or investigators.

They were coat-and-tie law enforcement people—law enforcement in the sense that they had the duty to attend court and to serve and execute the orders and writs of the court.

It is important that the U.S. marshals be recognized as being knowledgeable of their districts and known within their districts. It is people who are prominent in their districts and know the idiosyncracies of their districts who can enforce the law in the least intrusive and most efficient way.

A nationalization or centralization of this agency will not contribute toward that aspect of the marshal's ability to perform.

Mr. LISKER. Well, again, why is that different than the FBI's establishment of field offices, 55 or 59 field offices? Those individuals who are assigned to those field offices have an opportunity to meet the local people. They even have resident agencies in some cases where there is a local presence which identifies and has relationships with other State and local law enforcement.

Judge BOWEN. Well, I do not want to presume to comment on how the FBI should be organized. I will notice that the special agent in charge of the FBI office in one location or another may be transferred at any time by the Bureau. I assume that is at it should be in the running of the Bureau.

However, the position of the U.S. marshal as an officer of the court, subject to the supervision of the court as one of its officers, and having the duties that he does to the Attorney General in his public duties, is quite another thing. It is not like the FBI.

The status as an officer of the court and the history and tradition that have existed for almost 200 years make it different and make it such that a local standing or stature is of greater importance than this centralization.

Mr. LISKER. Do you see the anomaly that Director Morris referred to in the sense that an executive branch employee is, in essence, being directed by another branch of government?

Judge BOWEN. I see the complaint. I do not see it as an anomaly. Every U.S. attorney or assistant U.S. attorney that practices in any Federal court is an officer of that court and is responsible to the court for all matters respecting his professionalism and his ethical practice of the law.

I do not see the status of officer of the court and member of the executive branch as an anomaly.

Mr. LISKER. Every lawyer is an officer of the court and has the same responsibility and obligation that you have attributed to a U.S. attorney or assistant U.S. attorney.

Judge BOWEN. Yes, and I would resist the elimination of the status of a lawyer as an officer of the court in the same way that I would the elimination of the status of the marshal as an officer of the court.

In my opinion the Court Administration Committee will adopt the present language of 569(a) in its recommendation to the Judicial Conference, so that this status of officer of the court will remain in its recommendation.

Mr. LISKER. What is it that you believe gives the judges in the various districts the ability to direct their own security, to dictate how they should be protected and by whom?

Judge BOWEN. Well, I do not like the word "dictate." Whenever I do it, I do it in the form of a request, and pleasantly put, I think. But it is without doubt that the present provisions of 28 U.S.C. 569 give the court the authority to require the attendance of the marshal at any of its sessions.

Mr. LISKER. But apart from the statutory authority, what is it about the ability of the particular judge? You see, the problem, in part at least, relates to the question of the professional competence of a judge—not his competence in dealing with matters of a jurisprudential character and the law, which he is obviously well qualified to handle, but his technical expertise and ability to make judgments about his own security.

After all, the President of the United States does not make those judgments. It is the Secret Service which makes those judgments and sometimes overrules the wishes of the President where he wants to travel to a particular place at a particular time and, for security reasons, it is deemed inappropriate to do so.

Judge BOWEN. Well, I am not a policeman; I am not a detective. Mr. LISKER. Well, that is the point.

Judge BOWEN. I am not a security specialist. I am a Federal judge with 7 years' experience. I have the ordinary experience that one gets walking around in life for 45 years.

I know my cases; I know the background of my cases. I know my lawyers. I know the witnesses. I know the parties, generally, in a case that is coming up. I have had pretrial proceedings, where the marshal basically knows a case number.

I can tell you when there is some substantial risk not only of violent disturbance, but of a disturbance that might be of an unseemly or undignified nature. I am as concerned, Mr. Chairman, about the dignity, the perception, the image of the U.S. court as I am about their physical integrity and physical security.

I am not at all advocating the position that the judge has some omniscient ability to tell the marshal what to do about court security. All I am telling the Chair of this committee is that when it finally comes down to the "lick log" and I make a determination as an article III judge that we need a deputy marshal in the courtroom, I do not want to have to debate that and I do not think that I should, and I do not think it is the sense of the Congress of this Nation that I will have to. That is the reason for Senator Nunn's bill and the bill that has been introduced in the House.

Mr. LISKER. Do you not believe that the amendment to the bill which the Judicial Conference has agreed upon with the executive branch would meet those concerns?

Judge BOWEN. I will have to state my personal view with that. It goes a long way and I am delighted to see it. I have talked to Judge Sessions and members of the court security committee before those provisions were added.

I am happy to see it. But, in my opinion, not strong enough because it still adheres us to these "guidelines," which are now up to 45 pages, by the Chief Justice and the Judicial Conference.

I appreciate some simple guidelines and I will do everything I can to follow them, but I do not want to have to wade through 45 pages, and when it comes down to the final decision, I want to make it.

Mr. LISKER. Judge Bowen, because of the time problem, we have a number of additional questions which I would like to submit in writing. Chairman Thurmond also has additional questions, and we would appreciate your responses as promptly as possible.

Judge BOWEN. I will be only too happy to.

Once again, I appreciate the patience of the subcommittee, as well as that of the staff.

Mr. LISKER. Thank you very much.

[Judge Bowen's submissions for the record follow:]

PREPARED STATEMENT OF DUDLEY H. BOWEN, JR.

U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF GEORGIA

MR. CHAIRMAN AND MEMBERS OF THE SUB-COMMITTEE ON
SECURITY AND TERRORISM:

I sincerely appreciate and am honored by your invitation to attend this hearing and to testify on the proposed legislation, S. 2044, which has been termed the "United States Marshals Service Act of 1985." My appearance today is made as a citizen, taxpayer, concerned federal judge, and as a director and committee-of-one representing the Federal Judges Association. The FJA is a national organization whose membership is limited to the Article III federal judges of this nation. This growing professional group comprises over 450 district and circuit judges from every state and judicial circuit throughout the land. More than half of the Article III Judiciary are members of FJA.

I have studied the developing problems between the executive and judicial branches, the legislation proposed by the Marshals Service, and the needs of the public and the judiciary in this area for the past six months. In doing so, I have discussed these matters in depth with over one hundred judges, an equal number of lawyers, a half-dozen Senators, a score of Congressmen, and many citizens. These communications have reinforced my initial conclusions that the Congress knows best which laws this country needs, that the judges of the federal courts know best the requirements of the judiciary in fairly and uniformly applying the laws enacted by the Congress, and that the Executive Branch is

best able to execute and finally enforce the laws as passed by the Congress as interpreted by the courts.

I have also spoken on this subject to members and committees of the Judicial Conference. During that meeting there was a productive exchange of ideas and healthy debate with Mr. Stanley Morris, Director of the United States Marshals Service. The spokesman for the Marshals Service is polished, articulate, and persuasive. The pending bill has been beautifully packaged and aggressively sold. Nevertheless, every lawyer, every judge, every citizen, and the overwhelming majority of the legislators with whom I have spoken are firmly opposed to the passage of S. 2044 in its present form. The bill you are now considering is fraught with defects of a practical and conceptual nature.

First of all, this bill provides for a strong and centralized United States Marshals Service headed by a director who is its chief law enforcement officer. This is truly an anomaly at a time when economy and decentralization of government is in vogue. The present United States Marshals Service is an operational unit within the Department of Justice by which the Attorney General "supervises" the United States Marshals and their deputies in their public duties as opposed to court duties. The director of this service answers to the Attorney General, is not a United States Marshal appointed by the President with the advice and consent of the Senate, and does not have the broad powers of a Senate-confirmed United States Marshal.

Presently, the real duties of the Washington office are to provide coordination, training and logistical support to the Marshals and their deputies.

There is a great deal to be gained by retaining the present status of the United States Marshals as executive, policy-level appointees of the Executive Branch, confirmed by the Senate, with considerable independence in their respective districts. There is much to be lost by the imposition of statutory centralized controls from Washington over the individual United States Marshals.

The United States Marshals are officers of the court they serve and should remain so. In 1789 the United States Marshals' position was created in the very same Judiciary Act that constituted the Article III federal courts. It was conceived by the authors of the Judiciary Act, who were among those who wrote and ratified our venerable Constitution, that United States Marshals should be high-level officials known in and knowledgeable about their districts. It is obvious that those who know and who are known in their districts can most effectively enforce the federal law and the orders of the federal courts in the least intrusive manner and with the least likelihood of unpleasantness or breach of the peace. In the eighteenth century, and in the twentieth century, no amount of technical training and equipment can replace the intangible benefits which can be obtained only through the application of common sense and the "local touch." Thus, in its present

form, S. 2044 creates an oppressive and unseemly degree of central government control over the daily district operations of the United States Marshals. In effect, this bill creates a national police force which simply duplicates the function of other law enforcement agencies. In 1989, just as in 1789, the United States Courts will require the services of dedicated career officers for their protection and for the enforcement of their orders. I cannot imagine that it is the sense of the Congress or any member of the Judiciary Committee to in any way diminish the dignity or independence of the federal courts by depriving the judges of the tools necessary to do their jobs in an orderly and responsible manner.

The present duties, operations, and priorities of the Marshals Service bear little resemblance to those established in 1789 or those set forth in existing statutes. To be sure, internal directives of the Department of Justice, appropriations legislation and agency policies support the operations of the Service in varying degrees. However, the primary statutory duty of the United States Marshals to serve and protect the functional integrity of the United States Courts is, in practical application, accorded a low priority. The passage of S. 2044 in its present form will validate and ratify the priority which the Marshals Service has accorded to its fundamental role of court service.

In fact, the Marshals Service is undertaking "new duties" at an almost alarming rate. The publications and testimony of the Marshals Service would make one wonder how the Republic could possibly survive without it. There should be no mistake; these "new duties" have not been thrust upon the Service out of a lack of willing hands elsewhere. Indeed, they have been eagerly sought, even fought for, by the Marshals Service. And, toward what aim has this program been initiated? Quite simply, it is the enlargement of the manpower, the pay, the prestige, the public image, and relative stature of the United States Marshals Service.

To support this conclusion, one need only examine the communications of the Marshals Service and its proponents. In submitting S. 2044 to the Congress, the Attorney General of the United States said, "The proposed legislation will give the appropriate level of visibility and stature to the Marshals Service." Less than a year after taking office, Mr. Morris said, "I think what is going on now . . . will inevitably dictate the increase in basic grades in the Marshals Service." Further, "People have to be appreciated. They have to believe . . . that what they are doing is important" Additionally, "the bailiff functions are gone If it does exist in the field, it is subject to my discipline. I cannot have people doing low priority security tasks." In November, 1984, Mr. Morris opened a meeting with the comment that he believes "there is a real

opportunity in the next several years to improve further the Marshals Service and establish it as a premiere agency." In November, 1983, a spokesman for the United States Marshals Service referred to recent developments as a "transformation of the Service from the perception of deputy United States Marshals as bailiffs of the federal courts to a professional law enforcement organization." In May, 1985, having no warrant, no violation, and, therefore, no fugitive, the United States Marshals Service proudly, publicly, and posthumously, led Washington's assistance in the search for war criminal Josef Mengele, then thought to be in Paraguay or the Argentine. The high profile news release indicated that a lot of work had been done since February, 1985, by an undisclosed number of deputies. Mr. Morris justified the Marshals Service's involvement, saying, "The Marshals can get into this only by way of helping law enforcement agencies in other countries." In this context, the provision of security in federal courtrooms was described as "mundane tasks."

This campaign for the aggrandizement of the United States Marshals Service has been cleverly and successfully conducted. Without statutory authorization, the Service has transformed a low profile, hard-working, well trained cadre of people dedicated to court service into a glamorous new national police agency. In order to fully achieve this goal, the Marshals Service must obtain from the Congress the

effective repeal of 28 U.S.C. § 569. I will comment further on this section and its importance.

It is not for the Courts to say how the Department of Justice should be organized. That is between the Legislative and Executive Branches. If it is the will of Congress that the United States Marshals Service should be empowered and funded to apprehend fugitives, to transport nuclear weapons across the land, to dig through South America for war criminals, to engage in F.I.S.T. and Sting operations, to transport extradicted persons across our borders, to operate an Organized Crime Drug Enforcement task force, to transport prisoners, to protect witnesses, and to field a Special Operations Group or "S.W.A.T. Team," then, so be it. However, such should not permit the marshals or their central office to abdicate their first responsibility; that is, to provide support and security for the United States Courts.

Federal judges are not the only people in government who are deeply concerned about the low priority accorded to Court Security by the Service. Expressions have also come from the Comptroller General and prominent members of Congress. We have seen the introduction of other bills directed to this unfortunate subject. The Honorable Warren Rudman of New Hampshire informed me on June 26 that he had inserted into Urgent Supplemental Appropriations Bill for Fiscal Year 1986 the following language:

"The Committee is concerned over the tendency of the U. S. Marshals Service to inadequately

apportion its resources to meet priority areas such as court security and directs that more careful attention be given in the future to projecting and planning for these needs."

See Calendar No. 653, 99th Congr. 2nd, Report 99-301 at p. 21. I will say more about the report of the Comptroller General and other proposed bills in a moment.

Mr. Chairman, the concerns of federal judges for the security of their courtrooms and the participants in them is not imaginary. In the past few years, ostensibly for reasons of limited funding, we have experimented with guidelines established by administrative fiat to determine when a deputy marshal is necessary in a courtroom. These guidelines are not working and I know of nothing which has created the welter of misunderstanding, frustration, friction and hazard within the courts and their relationships with the Executive Branch. It is a fact that disturbance is as likely to occur in a civil trial as it is in a criminal matter. It is a fact that the nature and degree of risks cannot be accurately predicted. It is a fact that the districts of this nation are different and have differing needs. And it is a fact that the judge in the courtroom has a greater knowledge of the case, the parties, the witnesses, the attorneys, and, most certainly, the need for an authoritative presence within the courtroom.

Litigation is not a simple process. It is often misunderstood by the participants, sometimes even the lawyers. There is a dispute or controversy underlying every lawsuit. It is not at all unusual for these disputes to

erupt in very personal, sometimes physical, manifestations. These instances are unpredictable. Whether or not the case is a high-profile one or an unknown matter, the issues are all-important to the parties. I find it incomprehensible that administrators in Washington can presume to establish standards by which the security of the courts in the several districts is to be governed. An Article III judge should not have to debate his perception of the need for court security with anyone, especially an officer of the court.

Another objection, of equal importance, is that the provisions of S. 2044 callously and thoroughly repeal the concept of the United States Marshal as an officer of the district and circuit courts. This prospect is anathematic to those who fully appreciate the history, tradition, position and import of the District Marshal as an officer of the court. The office of United States Marshal was not originally conceived, and should not be now perceived, as being that of a detective, general policeman, patrolman, or the typical "law enforcement officer." The office of Marshal was patterned after the office of the common law sheriff who possessed complete authority within his bailiwick. In the Judiciary Act of 1789 there was no need for the First Congress to define the judges' authority to issue orders to the marshal with particularity. The primary duty of the marshal, as expressed in that act, was to "attend the district and circuit courts when sitting therein." The marshal was, indeed, the "sheriff" of the

federal courts and, like state court sheriffs and common law sheriffs, has the power to command all necessary assistance to execute the orders of the court. The best and most succinct commentary upon the office of the United States Marshal as an officer of the federal court which I have found is contained in the dissent of Justice Stephens in the case of Pennsylvania Bureau of Correction v. United States Marshals Service, ___ U. S. ___, 106 S.Ct. § 355 (1985), to which case I refer the sub-committee and the full judiciary committee.

The close relationship which has existed between the marshals and the judges of the courts, the extent of their mutual cooperation, and the efficiency of the courts in the administration of justice are due in significant part to the standing and action of the marshal as an officer of the court. Frankly, it is enough for me that this status has been recognized for almost two hundred years and that it was authored by those who wrote or ratified the United States Constitution. I cannot conclude that the Congress wishes to dismantle this treasured and venerable concept in the federal law simply because S. 2044 is silently indifferent to it.

It could be said that the "heart" of the concern of the lawyers and judges with whom I have spoken is that provision of S. 2044 which will repeal 28 U.S.C. § 569 and the frail promises that are substituted therefor. Presently, 28 U.S.C. § 569 provides generally as follows:

In subsection (a), the United States Marshal is designated as an officer of the court who may, "in the discretion of the respective courts, be required to attend any session of court." It is the combination of the status of the marshal of an officer of the court and the grant of this discretion to the courts which assure that the court will be able to call upon the marshal for needed assistance.

Subsection (b) provides that the United States Marshals shall execute all lawful writs and orders issued under the authority of the United States and their courts. This is a "no-nonsense" provision which, using the mandatory "shall," ensures that the marshal will promptly and fully perform his stated duty to execute the orders and writs of the court.

Subsection (c) provides for the limited supervision of the Attorney General over the United States Marshals in the performance of "public duties and accounting for public monies." It is this section that clearly delineates the areas in which the Attorney General, and therefore the Director of the United States Marshals Service, shall have control and supervision over the marshals. The rest of the duties of the marshal -- the court duties -- are quite noticeably left to the courts.

In lieu of the concise and meaningful provisions of 28 U.S.C. § 569, the Marshals Service offers in S. 2044 the frail promises of its section 566. Under subsection "(a)" thereof, the United States Marshals service is "authorized" to provide for the safety and security of the federal

courts. There is nothing mandatory about this. Also, any other assistance to be provided to the courts will be "in accordance with the policies established by the Attorney General." These provisions may be acceptable, depending on who is in office. If the Attorney General and the Director of the Marshals Service are concerned for the safety and security of the federal courts and genuinely wish to provide other assistance, then all will be well. To the contrary, God help us if they are not so benevolent. Another aspect of section 566 which gives lawyers and judges a fright is subsection "(b)" which provides that the United States Marshals Service shall execute all lawful writs and orders issued under the judicial authority of the United States "in accordance with the policies established by the Attorney General." In other words, the Executive Branch can do as they please with the orders of the Judicial Branch. The breadth of discretion accorded to the Attorney General and the United States Marshals Service is far beyond that which is allowed to the individual courts under the present law, 28 U.S.C. § 569. This could produce an intolerable diminution of the dignity, independence, and effectiveness of your federal courts. Section 566 of S. 2044 would produce a harmful imbalance in the checks and balances of the three branches of government.

If one reads the statutes, beginning with the Judiciary Act of 1789, ending with present 28 U.S.C. § 576, it is clear that the primary duties of the marshal are court

related. The law notwithstanding, the actual duties of the Marshals Service have been redirected and expanded. In turn, such changes encroach upon the ability of the marshals to perform their statutory court duties. This has been discussed elsewhere in my testimony. However, it is important that the role of United States Marshal be clearly articulated and underscored. He should be an officer of the court, provide security to the courts and all who attend them, and should faithfully execute the orders and writs of the court in accordance with the lawful terms thereof. Anything less will provide confusion, promote inefficiency, and reduce the ability of the courts to operate with the level of dignity and independence which the Congress expects and the public demands.

A great deal of attention has focused on 28 U.S.C. § 569 and § 566 of S. 2044. Chief Judge Bill Sessions of the Western District of Texas chairs a subcommittee of the Judicial Conference which has wrestled with this problem. To my way of thinking, the grant of authority to the individual courts under a proposal which has been recommended to the Judicial Conference is not strong enough. Individual judges who have so much entrusted to their judicial discretion should not be fettered or limited by Judicial Conference guidelines or directives in the employment of their discretion to require the attendance of a marshal at a session of court. Who else but the judge in the court will know when the witnesses, the jurors, the

parties, the lawyers, the court officials, or the evidence will require protection, security, or special attention? It is an indignity and impropriety to suggest that the men and women, upon whose shoulders the ultimate burden of the administration of justice is borne, appointed by the President by the advice and consent of the Senate, should have to consult any guideline, directive, or second opinion before they require the presence of a marshal in the courtroom.

This is not a regional or partisan position. Such sentiments have been voiced by lawyers and judges throughout the land. It does occur that a great deal of interest in the matter has been generated within the southeast region of the country. Perhaps this is because the federal judges of this area know that they still face daily decisions which are unpopular with substantial segments of the population of the areas in which they serve. Such has been the norm within our federal system. The federal courts have alternately been the darlings or the step-children of different regions of the land at different times. The time will come in every district when the preeminence of the federal law must obtain above the interest of the State or a locality. Woe unto the federal Union which does not amply equip its courts to meet such a challenge.

The interest in protecting the provisions of 28 U.S.C. § 569 is not mild or whimsical. Recently, members of the

Georgia Congressional Delegation introduced H.R. 5258 which amends section 569 by adding words to the effect, "The order of a court requiring the attendance of the marshal at any of its sessions may not be reviewed on appeal or otherwise." Within the past week Senator Sam Nunn of Georgia introduced S. ____ which amends 28 U.S.C. § 569 and provides that such an order "is reviewable only by judicial appeal for an abuse of discretion." As I understand it, it is the intent of H.R. 5258 and S. ____ to forever eliminate the possibility that anyone, by administrative fiat, agency interpretation, or any non-statutory means, may limit the ability of the federal courts to command the presence of the marshals so as to provide necessary court security. This pending legislation is not the only expression of concern about the continued vitality of 28 U.S.C. § 569. In recent weeks the State Bar of Georgia, the Federal Court Clerks Association, the National Council of United States Magistrates, the Judicial Council of the Fourth Circuit, the Judicial Council of the Tenth Circuit, the judges of the District of Colorado, the United States District Judges Association for the Fourth Circuit, and the Federal Judges Association, have stated their opposition to any legislation, S. 2044 included, which would impair, repeal, dilute, or weaken the present provisions of 28 U.S.C. § 569. I urge the attention of this sub-committee and the full committee to the resolutions and statements, copies of which have been provided to your staff.

Further, I would like to let you know that the decision of the Board of Directors of the Federal Judges Association to take an unmitigable and strong position on this matter was achieved by an overwhelming majority of those voting. In addition to the organizations mentioned, I have received the specific permission of individuals from various parts of the country to state their concurrence with certain views. Judge Frank M. Johnson, Jr. of the Eleventh Circuit Court of Appeals and Judge Walter E. Hoffman of the Eastern District of Virginia, two of the most esteemed jurists of this country, both of whom are the recipients of the coveted "Devitt Award," have conferred upon me the authority to state that they are opposed to any change in the provisions of 28 U.S.C. § 569. However, I am constrained to add that Judge Hoffman favors the Judicial Conference proposal over S. 2044 if a change is necessary. Distinguished and respected jurists, including Judge Frank A. Kaufman of Baltimore, Judge Hubert L. Will of Chicago, Judge Frank J. McGarr of Chicago, Judge Henry Bramwell of Brooklyn, Judge David N. Edelstein of New York City, Judge Jim R. Carrigan of Denver, Judge Anthony A. Alaimo of Brunswick, fifteen of the seventeen district judges in Georgia, most of the district judges in Alabama, and others favor strengthening the provisions of current 28 U.S.C. § 569. Many are supporting the aforementioned amendments. Accordingly, it is my own view that, as opposed to further consideration of S. 2044, this sub-committee should begin consideration of S.

_____, which will guarantee the ability of your federal courts to operate in a safe, secure and dignified environment. Neither I, nor any of the organizations I have mentioned, nor any of the judges I have named, nor the Federal Judges Association adhere to the view that a deputy marshal must be present in court at all times; nor do we desire to squander scarce resources of time, talent or money. It is our desire and our expectation simply to operate the courts with which we have been entrusted in a secure and dignified way, and in a way which we judges, the public, and the Congress, can look to with pride. The public is entitled to expect a system of courts which demands its respect. Just give us the tools, we'll do the job.

I must tell you that one of the saddest and most personal aspects of the dispute over the litigation, which is merely indicative of a greater philosophical dispute between the courts and the marshals, is the deterioration of the relationship and the friction which has come to develop between the Judicial and Executive Branches of government. The marshals and their deputies are receiving conflicting signals from the Department of Justice and from the courts. There is no doubt whatsoever in my mind that some clear direction in this area must be signaled by the Congress. If the United States Marshals Service is to be constituted by the Congress as an agency of the Executive Branch, armed and engined for the purpose of serving the United States Courts,

then let it be so. If the United States Marshals Service is to be a national police force which has duties, goals and objectives which impede or are inconsistent with its much needed service to the courts, then the Congress must face the decision and pass the legislation which will organize, man and equip an agency to serve and to secure the courts. If the United States Marshals Service is to do both, then it must be clearly stated in the law who has the authority to control the Marshal and what resources of the Service shall be unalterably dedicated to the courts..

It is lamentable that the points I have mentioned in the hope of defeating S. 2044 and many of those which Mr. Morris has referred to in support thereof, together with the clash caused by their juxtaposition, can be seen in a document which has existed since April 19, 1982. On that date, embodied in a seventy-five page report numbered GGD-82-3, the General Accounting Office of the United States discussed all of the problems that we have brought to your attention today. Among other things, the Comptroller General has told you that, "The Marshal is essential to the judicial process. They provide court security and enforce court orders to ensure the operational integrity of the courts." Additionally, and perhaps most importantly, on page 42, the Comptroller General concludes, "The point of this report is that there is a need to have an officer of the Executive Branch -- Marshals -- whose basic mission is to uphold the functional integrity of the courts. Other

Executive Branch agencies with different basic missions should not impose additional duties which are unrelated to and disrupt the performance of the Marshals' basic mission."

In short, the Comptroller General has already recommended to the Congress that the deeper and greater problem of this controversy must be addressed by a clear statement of the intent of Congress in the law. The touted reasons for the inability of the Marshals Service to serve the courts, that is, the lack of funding and the conflict of other duties, simply are not the real problems. Available funding should be first applied to the first priority. If this were done, the courts would have no complaint. Instead, the Marshals Service has utilized its considerable funding to perform other missions, lately assigned, after seeking them out. I will use the words of a Georgia Congressman to describe the matter with simple eloquence: "I'm not concerned about defeating the pending bills. The question is, how can we put Jack back in the box."

Mr. Chairman, on behalf of the Federal Judges Association, others whom I have mentioned, the responsible lawyers of this nation, the taxpaying public, and the dedicated federal judges of this land, I earnestly implore this committee to reject S. 2044 and to work promptly and effectively toward the passage of legislation which will amply and finally articulate the fact that the United States Marshals have the basic mission to uphold the functional integrity of the United States Courts through the provision

of court security and the execution of court orders. Other missions should not be allowed to hamper this very necessary duty.

My remarks would not be complete without a word about training and professionalism in law enforcement. A stated objective of the United States Marshals Service in the proposal of S. 2044 is the enhancement of its ability to provide training and achieve greater professionalism in its law enforcement role. Such, of course, is a lofty objective and one which will inevitably assure wide popularity. However, these goals of professionalism and training achieved through centralization must be viewed in light of the mission of the organization. If, indeed, the United States Marshals Service is constituted for the purpose of transporting nuclear warheads across the country, tracking down war criminals, operating "S.W.A.T. Teams," etc., then training in those areas will be required. Equally obvious is the conclusion that career deputies who are trained to serve the orders and writs of a court, to protect the courts, to shepherd witnesses, to handle the many and varied problems of juries and admitted evidence, and to function in all of the many ways which proper and adequate court security requires, would be ill-suited to efficiently field a Special Operations Group, apprehend foreign fugitives, or dispose of an inventory of assets seized and forfeited. Yes, we are all for training, professionalism in law enforcement and the like; but, the question is,

professionalism and training in what? This proffer of professionalism in law enforcement, ordinarily a worthwhile purpose, is, in this instance, hyperbole and a sales gimmick. The United States Marshals Service, as presently constituted, is perfectly capable of training marshals and their deputies to perform their basic mission. This does not require training as policeman, detective, investigator, asset specialist, or question documents examiner. These are the functions of other agencies; to duplicate those services is wasteful of scarce resources.

Mr. Chairman, this concludes my formal remarks. I sincerely appreciate your attention and patience. I will be happy to respond to any questions to the best of my ability.

THANK YOU

United States District Court

SOUTHERN DISTRICT OF GEORGIA
AUGUSTA, GEORGIA 30902DUDLEY H. BOWEN, JR.
JUDGE

POST OFFICE BOX 2106

ERRATA SHEET

During the haste of preparation and copying of my statement to be given in writing to the Sub-Committee on Security and Terrorism of the Committee on the Judiciary of the United States Senate, several mistakes and omissions occurred. While none of these are of great substance, it may be helpful to you to have a member of your staff make corrections and interlineations in the August 13, 1986 statement, as follows:

1. Page 8 - In the first full paragraph, third sentence, the word "else" should appear between the words "nothing" and "which" so that the phrase reads "nothing else which."
2. Page 17 - In the first full paragraph, first sentence, the words "the litigation" should be deleted and in lieu thereof insert the words "this legislation."
3. Page 21 - In the next to the last sentence before the first full paragraph, the words "question documents" should read "questioned-documents."

With my apologies for the inconvenience, I am

Sincerely,



Dudley H. Bowen, Jr.



Federal Court Clerks' Association

A RESOLUTION

OF THE

FEDERAL COURT CLERK'S ASSOCIATION

WHEREAS, it is vitally necessary in the administration of justice by the United States District Courts that:

1. The process of the Courts be promptly served and returns thereon be accurate and timely, and;
2. The inviolability of witnesses who have been separated for trial be preserved, and;
3. That juries must be protected from contacts or influences outside of the courtroom, and;
4. The witness not be bullied or abused by counsel, and;
5. That courtroom decorum be maintained, and;
6. That witnesses in detention must be promptly and timely produced for trial, and;
7. That defendants in custody be timely produced for trial and for sentencing and must be held at such places as to be accessible to their attorneys, and;

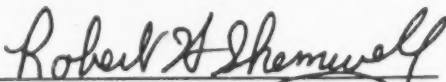
8. That custody of defendants convicted or awaiting trial be in all other respects responsive to Court order, and;
9. That the courtroom, courthouse and the persons or individuals involved in the process of administration of justice be protected, and;
10. The problems and comforts of citizen jurors must be handled sympathetically but with care and discretion, and;

WHEREAS, these functions crucial to the administration of justice have been traditionally performed by the U. S. Marshal Service under the direction and control of the Courts, and;

WHEREAS, there is now pending before Congress proposed legislation which would repeal the statute which provides that Marshals shall attend court when required by the Court and which further provides that in all other respects the control of these traditional officers of the Courts be transferred to the Department of Justice and the Attorney General of the United States,

NOW THEREFORE, be

RESOLVED that this Council unanimously urge the Congress of the United States to defeat the said proposed legislation as being contrary to the interests of the Administration of Justice and to the orderly operation of the United States District Courts.


ROBERT H. SHEMWELL, PRESIDENT

Orlando, Florida
June 26, 1986

A RESOLUTION
OF THE
NATIONAL COUNCIL OF UNITED STATES MAGISTRATES

WHEREAS, it is vitally necessary in the administration of justice by the United States District Courts that:

1. The process of the Courts be promptly served and returns thereon be accurate and timely, and;
2. The inviolability of witnesses who have been separated for trial be preserved, and;
3. That juries must be protected from contacts or influences outside of the courtroom, and;
4. The witness not be bullied or abused by counsel, and;
5. That Courtroom decorum be maintained, and;
6. That witnesses in detention must be promptly and timely produced for trial, and;
7. That defendants in custody be timely produced for trial and for sentencing and must be held at such places as to be accessible to their attorneys, and;
8. That custody of defendants convicted or awaiting trial be in all other respects responsive to court order, and;
9. That the Courtroom, Courthouse and the persons of individuals involved in the process of administration of justice be protected, and;
10. The problems and comforts of citizen jurors must be handled sympathetically but with care and discretion, and

WHEREAS, these functions crucial to the administration of justice have been traditionally performed by the U.S. Marshal Service under the direction and control of the courts, and:

WHEREAS, those duties are best performed by persons in the Marshal's Service who devote their working careers to such duties rather than by contract personnel who are not

career employees and whose employers may lose their contracts through competitive bidding or otherwise, and;

WHEREAS, the cost of performing the services and duties enumerated herein would be no more if performed by the United States Marshal Service than by contract security guards, and;

WHEREAS, there is now pending before Congress proposed legislation which would repeal the statute which provides that Marshals shall attend Court when required by the Court and which further provides that in all other respects the control of these traditional officers of the Courts be transferred to the Department of Justice and the Attorney General of the United States.

NOW THEREFORE, be

RESOLVED that this Council unanimously urge the Congress of the United States to defeat the said proposed legislation as being contrary to the interests of the Administration of Justice and to the orderly operation of the United States District Courts.

/s/ John M. Roper

JOHN M. ROPER, PRESIDENT

New Orleans, Louisiana
June 21, 1986

*This just received-
I expect a similar
resolution from
Fed. Ct. Clerks Assoc.
in the very near
future* *JMB*

RESOLUTION

WHEREAS, it is vitally necessary in the administration of justice by the United States District Courts that:

1. The process of the Courts be promptly served and returns thereon be accurate and timely; and,
2. The inviolability of witnesses who have been separated for trial be preserved; and,
3. Juries be protected from contacts or influences outside of the courtroom; and,
4. Witnesses not be bullied or abused by counsel; and,
5. Courtroom decorum and safety of courtroom personnel be maintained; and,
6. Witnesses, whether or not in detention, must be promptly and timely produced for trial; and,
7. Defendants in custody be timely produced for trial and for sentencing and be held at such places as to be accessible to their attorneys; and,
8. Custody of defendants convicted or awaiting trial be in all other respects responsive to court order; and,
9. The problems and comforts of citizen jurors be handled sympathetically but with care and discretion; and,

WHEREAS, these functions crucial to the administration of justice have been traditionally performed by the U. S. Marshals Service under the direction and control of the courts; and,

WHEREAS, it is virtually impossible to insure the proper conduct of a trial in a district court without the attendance of a U. S. Marshal.

NOW, THEREFORE, be it unanimously RESOLVED, by the Judicial Council of the Fourth Circuit, that the Council opposes passage of the pending legislation which would amend or repeal 28 U.S.C. § 569 to the end and effect that a U. S. Marshal could no longer be required by a judge to attend a court or related proceeding or be otherwise under the control of an Article III judge.

Be it further unanimously RESOLVED that it is the sense of the Council that the passage of such legislation would be inimical to the administration of justice in the federal courts as well as inimical to the best interest of the United States.

Be it further unanimously RESOLVED that a copy of this resolution be forwarded to the appropriate committee of the Judicial Conference of the United States, to Hon. Edwin L. Meese, the Attorney General of the United States, and to each member of the U. S. Senate and House of Representatives from this circuit.

STATE BAR OF GEORGIA

Robert M. Brinson

OFFICE OF THE
PRESIDENT 1986-1987



July 16, 1986

The Honorable Dudley H. Bowen, Jr.
P. O. Box 2106
U. S. Courthouse
Augusta, Georgia 30903

Dear Judge Bowen:

At its meeting of July 11th, the Executive Committee of the State Bar of Georgia formally voiced support for federal legislation which would permit United States District Judges to require the attendance of a marshal at court sessions and which would provide that said requirement would not be reviewable.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Robert M. Brinson". The signature is written in a cursive style with a large initial "R".

ROBERT M. BRINSON

RMB:lt

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT
POST OFFICE BOX 1787
OKLAHOMA CITY, OKLAHOMA 73101

WILLIAM J. HOLLOWAY, JR.
CHIEF JUDGE

TELEPHONE
405 / 231-4868
FTS 736-5576

July 23, 1986

✓ Honorable Dudley H. Bowen, Jr.
United States District Judge
Southern District of Georgia
P. O. Box 2106
Augusta, Georgia 30903

RECEIVED
JUL 27 1986
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

RE: Marshal's Service Act

Dear Judge:

The Tenth Circuit Judicial Council has considered the Marshal's Service Act at the time of our Resolution of April 25 and recently at our Council meeting on July 9, 1986. Our Council has authorized me to say that at the Meeting of the Committee on Court Administration, you may state that our Judicial Council has adopted the Resolution in April opposing the proposed Marshal Service Act of 1985 and remains of that view, and that we do not favor changes in the present statute.

Sincerely,

William J. Holloway, Jr.
William J. Holloway, Jr.

WJH:sw

cc: Honorable James E. Barrett
Honorable Monroe G. McKay
Honorable James K. Logan
Honorable Stephanie K. Seymour
Honorable John P. Moore
Honorable Richard P. Matsch
Honorable Clarence A. Brimmer, Jr.
Honorable Ralph G. Thompson
Honorable Bruce S. Jenkins

R E S O L U T I O N

In its regular meeting held in April 25, 1986, the Judicial Council of the Tenth Circuit considered S2044, HR3870, and HR4001 presently pending in the Congress of the United States. These bills would restructure and reorder the functions of the United States Marshal's Service. The Judicial Council expresses its strong opposition to this legislation.

The objections are:

- 1) The bills remove the marshal as an officer of the court;
- 2) The bills diminish the power of the court to oversee and insure the execution of its orders and process;
- 3) The bills diminish needed court security by relying for security on non-career contract "officers";
- 4) The bills are insensitive to the separation of powers in making the courts dependent upon the Attorney General, one of the most frequent litigants;
- 5) The bills permit the possibility that an Attorney General may alter or negate the execution of court orders and decrees;
- 6) The bills radically readjust the traditional roll of courts and court officers;
- 7) The bills unduly expand the power of the Marshal's Service and undefined Service "officers";
- 8) The bills diminish marshal continuity by removing the power of the court to make interim appointments when needed.

To understand our concerns, it must be remembered that in the exercise of judicial powers, the courts of the United States are dependent upon human agents to enforce the authority of the law. The courts, themselves, must be protected from any interference

with the processes of adjudication and the court's orders and decrees must be executed faithfully and forcefully.

Judges, jurors, witnesses, litigants, and the public expect and require that the work of the courts be done in a decorous atmosphere free from inappropriate intrusions under even the most clamorous conditions and in the most turbulent times. The results of the deliberative process must be given effect promptly and faithfully and free from external influence. The repeal of the present structure and the substitutions provided in the pending bills are unwarranted and undesirable contractions of the authority of the courts and their power to govern the judicial process effectively and in safety.

Historically, these court officers have been the United States Marshals serving as marshals of the courts pursuant to 28 U.S.C. § 569. The marshals and their deputies have performed these difficult duties with dedication, loyalty, and respect for the judicial system. More importantly, the tasks these officers are regularly called upon to perform require skill, tact, and responsibility of an extraordinary degree not easily found outside the Marshal's Service.

If there are instances of judicial misuse of the Marshal's Service, this council, and we believe indeed all councils, would take necessary corrective action upon matters called to their attention. We recognize that the Marshal's Service cannot be employed in menial tasks not designed to further the function of the judicial system as a whole. To the extent such misuses exist, we support judicial efforts to rid the service of this onus.

The council resolves that this statement of concern must be expressed to the Congress. Accordingly, the Circuit Executive shall send a copy of this document to the members of each Congressional delegation within the Tenth Circuit.

RESOLUTION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

In an en banc meeting held on May 28, 1986, the United States District Court for the District of Colorado considered S2044, HR3870, and HR4001 presently pending in the Congress of the United States. These bills would restructure, reorder, and modify the functions of the United States Marshal's Service. The Court expresses its strong opposition to this legislation. The objections are:

1. The bills remove the marshal as an officer of the court;
2. The bills diminish the power of the court to oversee and insure the execution of its orders and process;
3. The bills diminish needed court security by relying for security on non-career contract "officers";
4. The bills are insensitive to the separation of powers in making the courts dependent upon the Attorney General, one of the most frequent litigants;
5. The bills permit the possibility that an Attorney General may alter or negate the execution of court orders and decrees;
6. The bills radically readjust the traditional roles of courts and court officers;
7. The bills unduly expand the power of the Marshal's Service and undefined Service "officers";
8. The bills diminish marshal continuity by removing the power of the court to make interim appointments when needed.

To understand our concerns, it must be remembered that in the exercise of judicial powers, the courts of the United States are dependent upon human agents to enforce the authority of the law. The courts, themselves, must be protected from any interference with the processes of adjudication and the court's orders and decrees must be executed faithfully and forcefully. We emphasize that the courts have no independent staff to execute and enforce orders. Historically, the Marshal's Service has provided this essential and sensitive support.

Judges, jurors, witnesses, litigants, and the public expect and require that the work of the courts be done in a decorous atmosphere free from inappropriate intrusions under even the most clamorous conditions and in the most turbulent times. The results of the deliberative process must be given effect promptly and faithfully and free from external influence. The repeal of the present structure and the substitutions provided in the pending bills are unwarranted and undesirable contractions of the authority of the courts and their power to govern the judicial process effectively and in safety.

Historically, these court officers have been the United States Marshals serving as marshals of the courts pursuant to 28 U.S.C. § 569. The marshals and their deputies have performed these difficult duties with dedication, loyalty, and respect for the judicial system. More importantly, the tasks these officers are regularly called upon to perform require skill, tact, and responsibility of an extraordinary degree not easily found outside the Marshal's Service.

Instances of judicial misuse of the Marshal's Service, if any, can be remedied by appropriate action and cooperative efforts.

The Court RESOLVES that this statement of concern must be expressed to the Congress. Accordingly, the Clerk of the Court shall send a copy of this Resolution to the Colorado members of the Senate and House of Representatives.

Dated at Denver, Colorado this 5th day of May, 1986.

Sherman G. Finesilver
Chief Judge Sherman G. Finesilver

Alfred A. Arraj
Judge Alfred A. Arraj

Richard P. Matsch
Judge Richard P. Matsch

Jim R. Carrigan
Judge Jim R. Carrigan

Hatfield Chilson
Judge Hatfield Chilson

John L. Kane, Jr.
Judge John L. Kane, Jr.

Zita L. Weinshienk
Judge Zita L. Weinshienk

RESOLUTION

WHEREAS, it is vitally necessary in the administration of justice by the United States District Courts that:

1. The process of the Courts be promptly served and returns thereon be accurate and timely, and;
2. The inviolability of witnesses who have been separated for trial be preserved, and;
3. That juries must be protected from contacts or influences outside of the courtroom, and;
4. The witness not be bullied or abused by counsel, and;
5. That Courtroom decorum be maintained, and;
6. That witnesses in detention must be promptly and timely produced for trial, and;
7. That defendants in custody be timely produced for trial and for sentencing and must be held at such places as to be accessible to their attorneys, and;
8. That custody of defendants convicted or awaiting trial be in all other respects responsive to court order, and;
9. That the Courtroom, Courthouse and the persons of individuals involved in the process of administration of justice be protected, and;
10. The problems and comforts of citizen jurors must be handled sympathetically but with care and discretion; and

WHEREAS, these functions crucial to the administration of justice have been traditionally performed by the U.S. Marshal Service under the direction and control of the courts, and;

WHEREAS, those duties are best performed by persons in the Marshal's Service who devote their working careers to

such duties rather than by contract personnel who are not career employees and whose employers may lose their contracts through competitive bidding or otherwise, and;

WHEREAS, the cost of performing the services and duties enumerated herein would be no more if performed by the United States Marshal Service than by contract security guards, and;

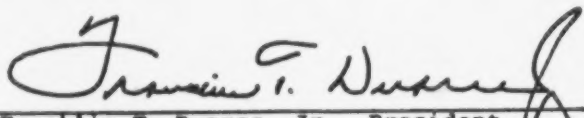
WHEREAS, there is now pending before Congress proposed legislation which would repeal the statute which provides that Marshals shall attend Court when required by the Court and which further provides that in all other respects the control of these traditional officers of the Courts be transferred to the Department of Justice and the Attorney General of the United States,

NOW THEREFORE, be it

RESOLVED that this Association unanimously urges the Congress of the United States to defeat the said proposed legislation as being contrary to the interests of the Administration of Justice and to the orderly operation of the United States District Courts, and;

RESOLVED FURTHER that a copy of this Resolution be mailed to each member of the House of Representatives and each Senator of the United States Congress who represent districts or states within the Fourth Circuit of the United States Court of Appeals, to the Administrative Office of the United States Courts, to the Federal Judicial Center, to Elmo B. Hunter, Chairman, Committee on Court Administration, and to William F. Sessions, Chairman, Committee of Judicial Improvements.

Unanimously adopted this 3rd day of April, 1986 in Asheville, North Carolina by the United States District Judges Association for the Fourth Circuit.



Franklin T. Dupree, Jr., President
United States District Judges Association
for the Fourth Circuit

UNITED STATES COURT OF APPEALS
ELEVENTH JUDICIAL CIRCUIT

NORMAN E. ZOLLER
CIRCUIT EXECUTIVE

TEL 404-581-9784
FIS 242-5724
99 FORTYTH ST. NW
ATLANTA, GEORGIA 30303

RESOLUTION OF THE JUDICIAL CONFERENCE
OF THE ELEVENTH CIRCUIT

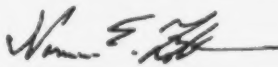
Whereas, the United States Marshals Service has recently suffered a reduction in services while simultaneously redirecting its diminishing resources toward law enforcement activities and away from its primary responsibility to provide court security and prisoner transportation services in the District Courts, and

Whereas, in some of the District Courts within the Eleventh Circuit the security of jurors, witnesses and court personnel is entirely at risk during jury trials of civil and criminal cases, and, further, the courts' responsibility for administering justice in criminal cases is being compromised by their inability to secure the presence of federal prisoners in court when required for judicial proceedings,

Now, Therefore, Be It Resolved:

1. That the responsibility for court security services be removed from the executive Department or the Department of Justice and that a new Court Security Service be organized within the Judicial Branch under the Administrative Office of the United States Courts subject to the direction and supervision of United States Judges.
2. That the United States Marshals Service be required to concentrate its energy and resources upon its remaining, primary responsibility of providing for the safe housing and timely transportation of federal prisoners, and otherwise enforcing the judgments and writs of the court in both civil and criminal cases.

Adopted this 14th day of May, 1986 at Atlanta, Georgia.



Norman E. Zoller
Secretary to the Conference

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

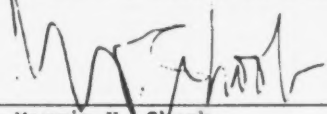
UNITED STATES COURTHOUSE

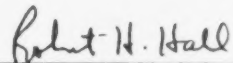
78 SPRING STREET S W

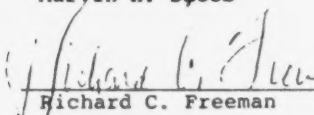
ATLANTA, GEORGIA 30303

CHAMBERS OF
MARVIN H. SHOOB, JUDGETO: SENATORS AND CONGRESSMEN
FROM THE STATE OF GEORGIA

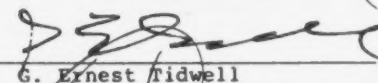
The undersigned United States District Judges serving in the Northern District of Georgia respectfully inform the State's congressional delegation that each of us is generally in agreement with the lettered paragraphs of the June 16, 1986, Memorandum forwarded by Judge Dudley H. Bowen, Jr., and that we support the proposed amendment to 28 U.S.C. § 569(a) attached hereto.

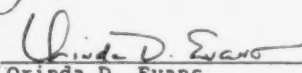

 Marvin H. Shoob

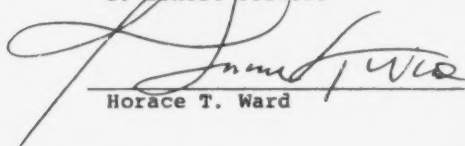

 Robert H. Hall

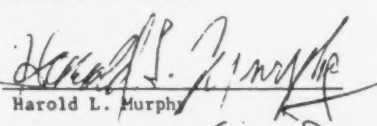

 Richard C. Freeman

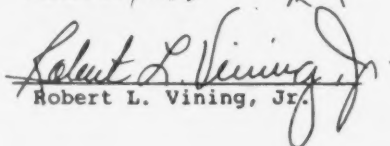

 J. Owen Forrester


 G. Ernest Tidwell


 Orinda D. Evans


 Horace T. Ward


 Harold L. Murphy


 Robert L. Vining, Jr.

June 30, 1986

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
POST OFFICE BOX 88
MACON, GEORGIA 31202
June 30, 1986

CHAMBERS OF
WILBUR D. OWENS JR.
CHIEF JUDGE

AREA CODE 912
749 8491

Honorable Sam Nunn
United States Senator
Russell-Senate Office Building
Washington, D. C. 20510

Honorable Lindsay Thomas
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Richard Ray
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Wyche Fowler, Jr.
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable George Darden
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Ed Jenkins
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Mack F. Mattingly
United States Senator
Russell-Senate Office Building
Washington, D. C. 20510

Honorable Charles Hatcher
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Pat Swindall
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Newt Gingrich
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable J. Roy Rowland
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Honorable Doug Barnard, Jr.
Member of Congress
Cannon Office Building
Washington, D. C. 20515

Dear Senators and Congressmen:

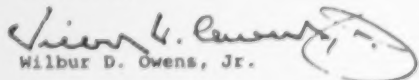
Bob Elliott, Duross Fitzpatrick and I, as judges of this court, are totally in agreement with Judge Dudley Bowen's June 16, 1986, memorandum suggesting a proposed amendment to 28 U.S.C. § 569(a).

We stand ready to furnish facts to any of you or any member of your staffs.

We support the suggested proposed amendment to 28 U.S.C. § 569(a).

With warm personal regards, I am

Sincerely,


Wilbur D. Owens, Jr.

United States District Court

SOUTHERN DISTRICT OF GEORGIA
AUGUSTA, GEORGIA 30603DUDLEY H. BOWEN, JR.
JUDGE

July 1, 1986

POST OFFICE BOX 2108

TO: SENATORS AND CONGRESSMEN
FROM THE STATE OF GEORGIA

The undersigned United States District Judges serving in the Southern District of Georgia respectfully inform the State's congressional delegation that each of us is generally in agreement with the lettered paragraphs of the June 16, 1986, Memorandum forwarded by Judge Dudley H. Bowen, Jr., and that we support the proposed amendment to 28 U.S.C. § 569(a) attached hereto.

Anthony D. Glenn
B. W. Edgfield
Dudley H. Bowen Jr.

PROPOSED
AMENDMENT TO
28 U.S.C. § 569(a)

APPROPRIATE CAPTION AND

NUMBER

The amendatory language
"not reviewable on (by)
appeal or otherwise" is
familiar in the federal
law.

IN THE HOUSE OF REPRESENTATIVES
IN THE SENATE OF THE UNITED STATES

A BILL

To amend title 28 of the United States Code and
Section 569 thereof.

Be it enacted by the Senate and House of Represen-
tatives of the United States in Congress assembled,

Section 569 of title 28 is amended by adding to
paragraph "(a)" thereof the following sentence:

Virtually identical pro-
visions appear in 28 U.S.C.
§§ 1334(c)(2), 1452(b),
1471(d), 1478(b), 2906
and in 11 U.S.C. § 305(c).

"The order of a court requiring the attendance
of the marshal at any of its sessions is not
reviewable on appeal or otherwise;"

So that said paragraph of such section shall here-
after be read as follows:

§ 569. Powers and duties generally; supervi-
sion by Attorney General

(a) The United States marshal of each dis-
trict is the marshal of the district court and of
the court of appeals when sitting in his district,
and of the Court of International Trade holding
sessions in his district elsewhere than in the
Southern and Eastern Districts of New York, and
may, in the discretion of the respective courts,
be required to attend any session of court. The
order of a court requiring the attendance of the
marshal at any of its sessions is not reviewable
on appeal or otherwise.

NEW § 569(a)
AS AMENDED

RESPONSES OF JUDGE BOWEN
TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR DENTON

COURT SECURITY COMMITTEES

YOU HAVE EXPRESSED CONCERN THAT DECISIONS REGARDING THE SECURITY NEEDS FOR INDIVIDUAL COURTS SHOULD BE MADE AT THE DISTRICT COURT LEVEL.

ARE FEDERAL JUDGES NOT INVOLVED IN THE COURT SECURITY COMMITTEE FOR EACH JUDICIAL DISTRICT WHICH IDENTIFIES THE SECURITY NEEDS OF INDIVIDUAL COURTS?

Yes, federal judges, including district judges, are involved in the district court security committee activities. I have no objection to keeping the court security committees on an advisory basis, but no committee can make an instantaneous assessment of the needs of a particular judicial officer on a daily, or hourly, basis. Court security committees meet once a week or once a month. The judicial member of such a committee may be headquartered hundreds of miles from other judges in the district. The existence of a court security committee is not a panacea; it is more of a placebo. The authority of individual judges to require the marshal to execute orders and attend court should not be diminished, weakened, or fettered in any way.

COURT REQUESTS FOR SECURITY

CAN YOU CITE ANY INSTANCES IN WHICH FEDERAL JUDGES HAVE REQUESTED THE MARSHALS SERVICE TO PROVIDE SECURITY FOR A SESSION OF COURT, AND THAT REQUEST HAS BEEN DENIED?

Yes, but I am not the repository of such information. I would like to place in the record a copy of the June 5, 1986, memorandum and incident report form which has been circulated by the Chief Judge of the Eleventh Judicial Circuit. Throughout my study of these problems, I have endeavored to avoid the collection or transmission of "anecdotal" information for fear that the ensuing discussion of specifics would divert attention from important principles.

Also, it is my opinion that there exists an evil even greater than the actual security risks posed by specific instances of denial. That is the fact that there is much uncertainty, confusion, and inaccurate speculation in the minds of judges, marshals, and their deputies as to when court service is required. No amount of training or any educational program will resolve this quagmire of misinformation.

This problem of relationship with the marshals is viewed by judges as chief among the problems of the judiciary. If the problem did not exist, why would Chief Judge Godbold circulate the memo, and why would all of the circuits and districts to which I have previously alluded have passed detailed resolutions expressing their grave concerns. These people are worried, not only about physical security, but also about the dignity and seemliness of court proceedings. I would like to add to the group of resolutions previously handed in for inclusion in the record the resolution of the district judges of the Eighth Circuit and the minutes of the July 23 executive session and resolution of the Eighth Circuit Judicial Conference.

Finally, I attach for inclusion in the record a memorandum report of an incident which occurred in my court, and I suggest that you contact Chief Judge Godbold for others. In point of fact, however, busy federal judges are not likely to memorialize every incident of denial of a request for deputy marshals. Once denied, many stop asking. Unfortunately, consumed with the desire to accomplish their judicial missions, some judges will prefer the resultant risks to further frustration and aggravation.

UNITED STATES COURT OF APPEALS
ELEVENTH JUDICIAL CIRCUIT

JOHN L. GODOLD

June 5, 1986

RECEIVED
JUN 10 1986
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

TO: All Chief District Judge

RE: U.S. Marshals Service

Dear Judges:

Following up on our discussion at the Judicial Conference, it is especially important that we be able to document with precise hard information, recorded while it is current, any shortcoming in court security or in the delivery or pick-up of prisoners.

I enclose a possible form, adapted from one already in use in SD Florida.

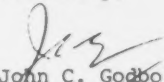
It is possible that we will need information like this to present to the proper committee of the Judicial Conference. The resolution we adopted at the Judicial Conference has been handed to the subcommittee (Judge Bill Sessions, chairman), but we were advised informally not to forward anecdotal information but wait and have it available for the full committee.

To the extent the judges can go back and recreate the facts of incidents that have already occurred, I encourage them to do so. The better "record" we have, the better off we will be.

I have one caveat with respect to court security. If there are specific incidents of inability to get an officer in the courtroom when needed, the judge involved should be certain that he makes the proper requests (identifying the case as a high-risk case, etc.). I have already received a couple of complaints by district judges involving high-risk cases in which the judge had simply assumed that because of Gramm-Rudman he would be unable to get an officer. We cannot successfully assert inability to get an officer that we did not ask for.

Note that, insofar as the form deals with handling of prisoners, it is intended to embrace removal of prisoners from the courtroom (to take back to jail or elsewhere) as well as difficulty in delivery to the courtroom. Thus it will cover untimely termination of court proceedings as well as untimely beginning.

Sincerely,


John C. Godbold
Chief Judge

JCG/mdd

cc: Judge's Edenfield and Bower

INCIDENT REPORT

- (1) COURT SECURITY OR
- (2) DELAY OR INTERFERENCE WITH TRIAL, SENTENCING, OR COURT PROCEEDING BECAUSE OF FAILURE OR INABILITY OF THE U.S. MARSHAL TO DELIVER THE PRISONER TO COURT.

CASE NUMBER:

DEFENDANT:

DATE/TIME:

JUDGE/COURTROOM:

PLEASE DESCRIBE THE INCIDENT:

PLEASE GIVE THE NAME OF PERSON OR PERSONS WITH THE U.S. MARSHAL SERVICE WITH WHOM THIS MATTER WAS HANDLED OR DISCUSSED.

UNITED STATES DISTRICT JUDGE

cc: Clerk of Court
Court Executive

RESOLUTION OF THE DISTRICT JUDGES OF THE EIGHTH CIRCUIT

WHEREAS, the United States Marshals Service has recently suffered a reduction in services while simultaneously redirecting its diminishing resources toward law enforcement activities and away from its primary responsibility to provide court security and prisoner transportation services in the District Courts, and

WHEREAS, in some of the District Courts within the Eighth Circuit the security of jurors, witnesses and court personnel has been substantially reduced, and in some instances has been entirely at risk, during jury trials of civil and criminal cases, and, further, the courts' responsibility for administering justice in criminal cases is being compromised by their frequent inability to secure the presence of federal prisoners in court when required for judicial proceedings, and

WHEREAS, there is now pending before Congress proposed legislation which would repeal Title 28, United States Code, section 568, and which would transfer the control of the Marshals Service to the Department of Justice and the Attorney General of the United States.

NOW, THEREFORE, BE IT RESOLVED:

That the responsibility of the United States Marshals Service for court security services be strengthened and the authority of the federal courts to supervise court security services by the United States Marshals Service be enhanced by appropriate legislation in the Congress of the United States.

That the Congress of the United States is hereby urged to defeat pending legislation which would repeal Title 28, United States Code, section 569, because said pending legislation would be contrary to the interests of Justice and the orderly administration of the federal courts.

Adopted this 22 day of July, 1986.

151

Minutes

EXECUTIVE SESSION

Eighth Circuit Judicial Conference
Minneapolis - July 23, 1986

Rec'd At K.C., Mo.

AUG 23 1986

8th USCA - Bowman

Chief Judge Donald P. Lay, presiding. Senior Judge Oren Harris, parliamentarian.

The meeting was called to order at 1:30 p.m. with a welcome by Judge Lay, followed by an introduction of new judges.

PROGRAM

The Judicial Scene in Washington--L. Ralph Mecham, Director, Administrative Office, Washington, D.C.

Tributes, Anniversaries and Budget Cuts--A. Leo Levin, Director, Federal Judicial Center, Washington, D.C.

Jurisdictional Trends in Federal Indian Law--Hon. William C. Canby, Jr., U.S. Circuit Judge, Ninth Circuit.

New Sentencing Commission--Hon. William W. Wilkins, Jr., U.S. Circuit Judge, Fourth Circuit (Chairman, U.S. Sentencing Commission).

BUSINESS

Representative to U.S. Judicial Conference

Judge Edward Filippine moved that Chief Judge John F. Nangle be nominated as the district judge representative from the Eighth Circuit. Seconded by Chief Judge G. Thomas Eisele. Judge Oren Harris then moved that nominations be closed and Judge Nangle be elected by acclamation. Motion seconded, and unanimously carried. Judge Nangle expressed his thanks and dedication.

U.S. Marshal Service

Chief Judge Nangle, on behalf of the District Judges Association, moved the adoption of the following resolution to be presented to the U.S. Judicial Conference:

WHEREAS, the United States Marshals Service has recently suffered a reduction in services while simultaneously redirecting its diminishing resources toward law enforcement activities and away from its primary responsibility to provide court security and prisoner transportation services in the District Courts, and

WHEREAS, in some of the District Courts within the Eighth Circuit the security of jurors, witnesses and court personnel has been substantially reduced, and in some instances has been entirely at risk during jury trials of civil and criminal cases, and, further, the courts' responsibility for administering justice in criminal cases is being compromised by their frequent inability to secure the presence of federal prisoners in court when required for judicial proceedings; and

WHEREAS, there is now pending before Congress proposed legislation which would repeal Title 28, United States Code, section 569, and which would transfer the control of the Marshals Service to the Department of Justice and the Attorney General of the United States,

NOW, THEREFORE, BE IT RESOLVED:

That the responsibility of the United States Marshals Service for court security services be strengthened and the authority of the federal courts to supervise court security services by the United States Marshals Service be enhanced by appropriate legislation in the Congress of the United States.

That the Congress of the United States is hereby urged to defeat pending legislation which would repeal Title 28, United States Code, section 569, because said pending legislation would be contrary to the interests of Justice and the orderly administration of the federal courts.

Motion seconded, and unanimously carried.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : CHIEF JUDGE JOHN C. GODBOLD

FROM : JUDGE DUDLEY H. BOWEN, JR.

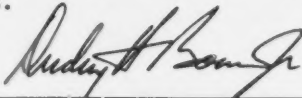
SUBJECT: UNITED STATES MARSHALS SERVICE

DATE: July 1, 1986

On March 7, 1986, a direction for the attendance of deputy marshals at a prison civil rights case was issued. See attached blank and completed form. The clerk informed the Augusta deputy that two deputies should appear.

On March 17, 1986, at approximately 4:00 o'clock P.M. I spoke with Deputy Inspector George Sterling, who said nothing to me about the non-attendance of the deputies. Later, I found that he was the man who made the decision not to supply the two deputies. The next morning when the case began, one deputy showed up. He had recently recovered from bullet wounds and was not in the physical condition to work a sensitive trial. No other CSO or deputy was offered. I proceeded into the trials allowing state correctional officers to have weapons in the courtroom contrary to our local rules.

These prison civil rights cases invariably involve murderers, armed robbers, kidnappers and the like. I was told that I could not have two deputies because the rest were at the pistol range. I met with the marshal in the presence of the court reporter who made a record of the conference. Perhaps because of the direct way in which the matter was handled and my ceaseless insistence, the marshal has since seen fit to accommodate my later demands.



DUDLEY H. BOWEN, JR.



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

HENRY R. CRUMLEY, JR.
CLERK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

OFFICE OF THE CLERK

P. O. BOX 9130

SAVANNAH, GEORGIA 31412

TELEPHONE (912) 244-4201

FTE 542-4201

Office of the United States Marshal
United States Courthouse
Augusta, Georgia 30902ATTN: Senior Resident Deputy Marshal
Augusta, Georgia

Gentlemen:

Pursuant to the provisions of 28 U.S.C. § 569, the Honorable Dudley H. Bowen, Jr. has determined that the presence of Deputy United States Marshal(s) will be necessary in the numbers shown and at the time and place set forth below.

Place: SavannahTime: 10:00 A.M.Date: March 18, 1986

Type of Proceeding:

Jury Trials	()
Jury Selection	()
Non-Jury Trials	()
Prisoner Pro Se Hearings	
or Trials	(XX)
Naturalization	()
Other Ceremonial	()

It presently appears that court will be in session for approximately 4 day(s).

Please confirm the attendance of the Deputy Marshal(s) with the undersigned well in advance of the stated court date. Any changes or substitution of personnel should be coordinated with the undersigned.

With thanks for your cooperation, I am

Very truly yours,

Rita J. Gilbert

Henry R. Crumley, Jr.

By: Rita J. Gilbert,
Courtroom Deputy Clerk

DATED: March 7, 1986

MARSHALS COURT ATTENDANCE

YOU HAVE SUGGESTED AN AMENDMENT TO 28 U.S.C. SECTION 569(A) UNDER WHICH A JUDGE'S ORDER COMPELLING A MARSHAL TO ATTEND COURT WOULD NOT BE REVIEWABLE ON APPEAL.

DO YOU SEE ANY POTENTIAL FOR ABUSE OF SUCH NON-APPEALABLE ORDERS?

WOULD THE COMPROMISE AMENDMENT WORKED OUT BETWEEN THE JUDICIAL CONFERENCE AND THE MARSHALS SERVICE -- PROVIDING FOR THE ESTABLISHMENT OF POLICIES BY WHICH MARSHALS MAY BE REQUIRED TO ATTEND COURT -- SATISFY YOUR CONCERNS ABOUT COURT SECURITY?

ABUSE

Yes, I do. There is always the rare but existing potential for an abuse of judicial discretion. Regardless of the words of the amendment, an appeal will lie for an abuse of judicial discretion. Please note that S.2732, already in the record, specifically provides for appeal for the abuse of discretion. Abuses can also be dealt with by disciplinary proceedings. Such is a very proper subject for consideration by the judicial conference.

I cannot deny the human fallibility of judges, even federal judges. However, abuses are few, and I cannot see the logic of eliminating all discretion in the judiciary to avoid the possibility of infrequent abuse of it.

Please keep in mind that the present law, and the S. 2732 amendment, only empowers judges to require the attendance of the marshal at court sessions.

COMPROMISE AMENDMENT

Please let me point out that there has been no "compromise amendment" between the Marshals Service and the Judicial Conference. Judge Sessions, the Chairman of a Judicial Conference Subcommittee, has proposed a "compromise amendment" to the parent Court Administration Committee. The Court Administration Committee has substantially altered the subcommittee proposal. I am greatly encouraged by the desire of the Court Administration Committee to strengthen the subcommittee proposal. However, I disagree with the formulation and imposition of policies or guidelines which may restrict the discretion of individual judges to require the marshal to attend court or execute court orders. These things are matters of judicial discretion and cannot be predetermined by administrative action. My concerns are not only for court security, but also for the appearance, dignity, and seamliness of our proceedings. There is little risk posed in a naturalization or other ceremonial proceeding, but the attendance of a marshal is very important.

The Judicial Conference will not consider the Court Administration Committee's proposal until the September, 1986, meeting of the Conference.

JUDICIAL SECURITY

DO YOU BELIEVE THAT IT IS WISE TO GIVE JUDGES THE FINAL SAY ON WHAT MEASURES ARE NECESSARY TO PROVIDE FOR THEIR OWN SECURITY? AFTER ALL, THE PRESIDENT DOES NOT CONTROL THE JUDGMENTS OF THE SECRET SERVICE IN MATTERS RELATING TO HIS PROTECTION.

Frankly, I have no idea what control the President retains over the "judgments of the Secret Service." I would be very much surprised should the Secret Service presume to disobey his direct order. What the President does with the Secret Service is irrelevant to the needs of federal judges in the conduct of their court proceedings.

To answer the question specifically, it may or may not be wise to give a judge the final say on such measures. That would depend entirely on the relationship between the judge and the marshal. I fully intend to allow the marshal and his well-trained deputies to have the broadest possible discretion in determining what specific measures are necessary to provide for the security of the court, its officers, the evidence and those attending. I believe that it is altogether wise to leave such matters to the marshal. I will not dictate the details of their actions. By all means, the judge should have the first and final say as to when the marshal will be present and what orders will be executed. As a practical matter, it should be kept in mind that the judge and the marshal will very likely agree in most instances. We are talking about the potential for disagreement in a few cases.

Again, I am saying only that the judges must have the authority to require the presence of the marshal. When that authority should be used and the methods of providing security are matters for subjective consideration under all of the circumstances.

INTERIM APPOINTMENT OF MARSHALS

DO YOU AGREE WITH THE PROVISION OF S. 2044 WHICH GIVES TO THE ATTORNEY GENERAL, RATHER THAN THE DISTRICT COURT, THE POWER TO APPOINT AN INTERIM MARSHAL TO FILL A VACANCY? IF NOT, PLEASE EXPLAIN WHY YOU DISAGREE

It is my very strong personal view that the chief judge of the district court should make the appointment of an interim marshal. Members of the Judicial Branch and the Legislative Branch are in much closer touch with the individual characteristics and needs of the various districts. The United States Marshals have never been conceived, and should not be perceived, as detectives or policemen in the usual sense. They are officers of the court; they are policy level officers of the Executive Branch. The courts have the ability

to communicate with legislators quickly and effectively. The local nature and local needs of such interim appointments can be best preserved by retaining the procedures for interim appointments which have existed for almost two hundred years. Please review pages 3 and 4 of my written statement. [See also my response to Chairman Thurmond's related question.]

SEPARATION OF POWERS

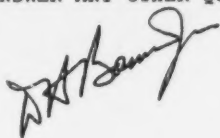
YOU HAVE INDICATED PREVIOUSLY THAT S. 2044 COULD IMPACT NEGATIVELY ON THE "SEPARATION OF POWERS" BETWEEN THE EXECUTIVE AND JUDICIAL BRANCHES AND, ULTIMATELY, COULD ERODE THE INDEPENDENCE OF ARTICLE III COURTS.

COULD YOU EXPLAIN HOW THIS COULD OCCUR?

Recent history notwithstanding, it has not always been the case that the Executive Branch is responsive and cooperative to the judgments of the courts. One president callously observed, "John Marshall has made his decision, now let him enforce it."

One cannot decide with total objectivity and independence the most vexing, challenging, and difficult cases in the absence of the certainty of one's physical security and the confidence that an order will be enforced subject only to the rights of judicial appeal. As I have mentioned on page twelve of my written remarks, section 566 of S. 2044 authorizes, but does not require, the United States Marshals Service to provide for the safety and security of federal courts. Also, that section provides that writs and orders issued by the courts shall be executed in accordance with the policies established by the Attorney General. Under the language of this proposed statute, the Executive Branch can do its will with the security, dignity, and orders of the Judicial Branch. The broad discretion accorded the Attorney General in S. 2044 goes far beyond that which is allowed the individual courts in requiring the presence of marshals at court sessions under the present law, 28 U.S.C. § 569. I continue to be of the opinion that the "blank check" provisions of section 566 of S. 2044 could well result in an intolerable diminution of the dignity and effectiveness of the federal courts. It naturally follows that such a diminution could undermine the revered independence of the Article III courts and produce a harmful imbalance in the checks and balances of our constitutional form of government.

I WISH TO THANK SENATOR DENTON FOR PERMITTING ME TO ANSWER THESE QUESTIONS. I AM EAGER TO AMPLIFY ANY RESPONSE AND TO ANSWER ANY OTHER QUESTIONS TO THE BEST OF MY ABILITY.



QUESTIONS SUBMITTED BY SENATOR STROM THURMOND (R-S.C.)
 CONCERNING S. 2044
 THE UNITED STATES MARSHALS SERVICE ACT OF 1985
 AUGUST 13, 1986

QUESTIONS FOR THE HONORABLE DUDLEY H. BOWEN, JR.
 JUDGE OF THE UNITED STATES DISTRICT COURT
 OF THE
 SOUTHERN DISTRICT OF GEORGIA

1. SECTION 566 OF S. 2044 REQUIRES THE U.S. MARSHALS SERVICE TO PROVIDE FOR THE SAFETY AND SECURITY OF THE FEDERAL COURTS IN ACCORDANCE WITH POLICIES ESTABLISHED BY THE ATTORNEY GENERAL. CURRENTLY, FEDERAL JUDGES HAVE STATUTORY AUTHORITY TO EXERCISE THEIR DISCRETION IN REQUIRING FEDERAL MARSHALS TO BE PRESENT IN COURTROOMS AND TO PROVIDE FOR SECURITY. WHAT EFFECT WOULD S. 2044 HAVE ON THE SECURITY AND SAFETY OF COURTROOMS IF FEDERAL JUDGES LOSE THIS "DISCRETIONARY" AUTHORITY TO REQUIRE THE PRESENCE OF MARSHALS IN THE COURTROOM?

ANSWER TO QUESTION 1:

First, I would like to most respectfully correct a misconception that has existed about S. 2044 since it was transmitted to the Congress. Section 566 of S. 2044 does not "require" the United States Marshals Service to do anything about court security. Rather, the bill merely authorizes the provision of security. The language of the bill is permissive, although it has been touted as mandatory. In this regard, please refer to my written comments about section 566 which are already in the record of this hearing.

While one of my principle aims is to secure the retention of the judge's unfettered discretion to require the attendance of marshals at court sessions, and while I have grave concerns about greater risk of disturbance and violence in the absence of deputy

marshals from the courtrooms, I cannot truthfully predict with any accuracy beyond speculation the effect that S. 2044 (if passed) would have on the safety and security of your courtrooms. To me, the concept that an Article III federal judge should have to debate with anyone his decision that a well-trained, career deputy marshal is needed in the courtroom is appalling. The hard-working, dedicated judges that I know are certainly capable of making prudent, well-advised and proper decisions in this regard.

To leave the discretion to require marshals at court sessions with federal judges will not necessarily diminish or detract from the input that the Marshals Service may have in such decisions. It would be my practice always to confer with the marshal in case of any question.

Additionally, there are times when a deputy marshal is needed to preserve the dignity, decorum, and seemliness of federal court proceedings. These do not necessarily bear upon situations of actual physical safety to the person. There are times in emotionally-charged civil proceedings, naturalization and other ceremonial proceedings, jury sequestration, and the handling of evidence, when the presence of a career deputy marshal is necessary if a trial is to be conducted with propriety, decorum, and (equally important) the appearance of propriety. No one is more aware of such situations than is the presiding judge.

Further, it should be noted that section 566 of S. 2044 authorizes the Marshals Service to provide for the security of the federal courts. This language does not mandate the presence of even a deputy marshal. Most of the resolutions of the various courts and national organizations which appear in this record, particularly that of the Fourth Circuit Court of Appeals, express the most palpable concern about the handling of sensitive matters by contract guards instead of trained career deputy marshals. We have no objection to the use of contract court security officers for appropriate purposes, but they should never be permitted to replace deputy marshals in their functions as officers of the court.

2. S. 2044 ALLOWS THE ATTORNEY GENERAL TO APPOINT INTERIM MARSHALS. CURRENTLY, THE COURT WITH JURISDICTION MAKES THE INTERIM APPOINTMENTS. THE DEPARTMENT OF JUSTICE CLAIMS THAT S. 2044 WILL STREAMLINE THE PROCESS AND LEAD TO MORE QUALIFIED APPOINTEES. CAN YOU RESPOND TO THEIR POSITION?

ANSWER TO QUESTION 2:

Senator Denton has asked a similar question which I have answered with further reference to my written remarks. To avoid duplication in the record, I respectfully request that the Chairman and the Committee consider my response to Senator Denton's question and my written statement. To further answer Senator Thurmond's question, I will say that I have no doubt whatsoever that the "in-house" appointment of interim marshals under the provisions of S. 2044 will streamline the process of maintaining a cadre of U. S. Marshals who will be forever loyal to the Executive Branch, if not the administration then in office. This prospect of "streamlining" the United States Marshals Service is one of the most fundamental and important decisions which the Congress will have to face when addressing this legislation. In my written remarks I have discussed the feature of centralization which S. 2044 will produce. Judge Sam Pointer has addressed it as "bureaucratization."

Presently, the only thing that prevents the United States Marshals Service from its goal of a strong, centralized, bureau of more typical law enforcement responsibility is the tenacity of a few judges and the courage of some district marshals who know, understand, and appreciate the fact that they are policy-level executives, appointed by the President and confirmed by the Senate, and independent of day-to-day control by Washington. If the appointment process is changed so that the U. S. Marshals Service is permitted to make interim appointments which, almost assuredly, will be followed by pressure for the permanent appointment of the same person, the independent nature of the district marshals and the effect of the input of the Legislative

Branch in the appointment process will be substantially reduced.

It is my own unalterable view that the judges in the district and the senators from the particular state are the most knowledgeable in the specific needs and characteristics of the several districts. It is they who can best determine who should serve on an interim or permanent basis.

3. WHAT OTHER SIGNIFICANT IMPACT WILL S. 2044 HAVE ON THE CURRENT PRACTICES OF THE FEDERAL COURTS IN REGARD TO THE ASPECTS OF EXISTING PRACTICES OF THE U.S. MARSHAL SERVICE?

ANSWER TO QUESTION 3:

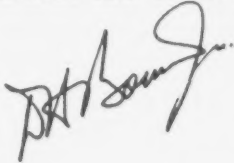
The provisions of S. 2044 create a centralization of power in a bureau which was formerly a logistical support agency for the offices of ninety-four district marshals. This centralization of power is unnecessary and contrary to the current mood of the nation which, I believe, is dedicated toward a decentralization of its government.

S. 2044 would also eliminate the status of the United States Marshal and his deputies as officers of the court. I see this as a very important change. It is a repeal of a concept which has been in the law since 1789. I have a deep reverence for the status of the marshal as an officer of the court, subject in his court duties to court control. The marshal and the deputies should remain as officers of the court.

Further, the provisions of S. 2044 are open-ended, non-specific, and constitute a blank check grant of authority to the United States Marshals Service to perform virtually any mission assigned by the Attorney General. Against this background there is no doubt that court service will receive a very low priority in the order of assignments. The history of the last ten years dictates that conclusion.

Finally, the provisions of S. 2044 will ratify the past abdication of statutory duties, and further encourage the assumption of new and other duties which conflict with the primary, basic role of the United States Marshals, which is court service. Once again, I refer to the report of the Comptroller General, GGD-82-3, which so clearly concludes that the courts must have an agency upon which they can depend for court security and execution of orders as the basic, primary, and dedicated role of such agency.

I WISH TO THANK SENATOR THURMOND FOR PERMITTING ME TO ANSWER THESE QUESTIONS. I AM EAGER TO AMPLIFY ANY RESPONSE AND TO ANSWER ANY OTHER QUESTIONS TO THE BEST OF MY ABILITY.

A handwritten signature in dark ink, appearing to read "D. A. B. Smith". The signature is written in a cursive, flowing style with a large, prominent "S" at the end.

Mr. LISKER. The next witness is the Honorable Sam C. Pointer, Jr., chief judge of the U.S. District Court for the Northern District of Alabama.

Welcome, Judge Pointer.

STATEMENT OF HON. SAM C. POINTER, JR., CHIEF JUDGE, U.S. DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA

Judge POINTER. Good morning. I am here at the chairman's invitation, not on behalf of any group of the Judicial Conference, nor on behalf of any judges association, but only to express my own views.

I find myself somewhat allied with but standing apart from each of the two judges who have spoken just before, and I will try to indicate, as these represent my individual views, where there are differences and where there are agreements.

My initial concern has largely been resolved by the apparent agreement between the Marshals Service and the Subcommittee on Judicial Improvements in the revision of language which now, as I understand it, would make it clear that it remains the primary responsibility of the Marshals Service to provide security and outlines provisions for that.

Prior to that revision, I had difficulties with what was happening in the tone and direction of the legislation. It still would, however, make court security subject to general guidelines, and I share some of the apprehensions that Judge Bowen expressed.

My difficulties with guidelines are not that I have found them unacceptable. I have not read the 45-page guideline, but between the marshal of the court in north Alabama and the judges of the court there, we have had no difficulty, frankly, in living under and with them, and I am sure that we will continue to do so, whether we have this legislation or not.

I do express this view; namely, that our court has received loyal and dedicated service from marshals over the years I have been on it. There have been no major difficulties between judges and the deputy marshals and the marshals at any point that I am aware of.

I personally received around-the-clock protective service back during the early 1970's at a time when threats had been made. That included my family as well. That was provided not only by marshals from the local district, but from other districts. The need for coordination of personnel in providing services on an interim and periodic need basis is therefore one that I appreciate.

I do have some question about the bureaucratization of the marshals. Bureaucracy provides, obviously, the opportunity for uniformity. It also provides the opportunity for inflexibility at times, which is the principal problem with any guidelines. Whether they be called rules, guidelines or standards, uniformity is done at some cost to flexibility.

I am aware of how this has worked during the period of months just past when we were at the lowest level of financial funding, and trying to work, which we did, with the Marshals Office. Their activities could not really be directed on a cost-saving basis at a local level, but had to follow certain guidelines on a national level.

We could have saved, I believe, the same amount of money with less difficulties if there had been more options. That, as I understand it, on a financial basis may not be feasible, but it certainly is true when it comes to enforcement of proceedings and writs, the local presence, the opportunity to know conditions in the district and to be known by people in the district as being local.

We have had no difficulty with marshals carrying out unpopular orders in the district. Indeed, in my view, the fact that those were being carried out by someone identified as a local person was of value, a value that would have been lost to some degree had that person been perceived as simply an agent sent from a central bureau.

There may be questions that would be asked in this general framework about the role of the marshal. I would like to skip that because at least two different viewpoints have been expressed and I find myself somewhere between the two poles of the judges who have just spoken.

I would raise two additional questions that, so far as I know, have not been presented to the committee, but which I would believe should be looked at prior to consideration of this bill, as amended.

There is reference made in the fee section of this to charging fees for overtime expenses incurred by marshals. This is a part of the general revision dealing with fees and it may be that in the most recent revision of this act that went through Judge Sessions' committee, some change was made in this.

If this provision remains, which is proposed section 1921(a)(1)(H), it makes reference statutorily to something that is antithetical, in my view, to the professionalism of the marshals.

It relates, very frankly, to a union contract in which deputy marshals now, by union contract, have not only provisions for overtime, but work rules that have significantly affected the ability of marshals in the local area to direct the manner of performance of their work, restricting them to particular hours and, in turn, not having the flexibility to deal with problems as the need arose.

This has been critical in many districts, not our own, during the financial reduction when it came to transporting prisoners. This statute, as I view it, tends to codify that concept. I am saying that the statute should not, in my judgment, put that kind of imprimatur on these restrictions.

There is a second provision in the fee area that I think should be revised. Proposed section 1921(d) provides that the marshal may require a deposit for the fees that the marshal charges before performing those services.

This particular provision needs to be amended to explicitly say that it is subject to provisions such as section 1915 of title 28 to make it clear that this provision is not going to close the courthouse doors to those people that up to this point have been allowed to proceed in forma pauperis without prepayment of fees. I think some cross-reference is needed to make clear that that authority is not used to close the door of the courthouse to people that our courts have opened themselves up to.

Federal judges serve in districts; at least, the district judges do. We receive valuable training and coordination at several other

levels, including national organizations in Washington—the Administrative Office, the Federal Judicial Center.

It is not necessary and critical that, for us to have an efficient judicial system, we be organized into one judicial district, with its chief judge in Washington. It has been traditional to work through districts.

I do not think that the marshals in their role as officers of the court in providing for court security and in providing for the service and execution of writs need be consolidated under this bureaucracy in Washington.

It may be that that is an improvement, but it should not be sold on the basis that that is needed in order to have training and coordination. That is presently occurring; it can continue to occur. One need not federalize, if I can use another analogy, the National Guard and take away the role of States in those organizations merely to assist in efficient training and coordination. I suggest that the same thing may be true with the marshals.

I support legislation to correct and make clear where the gaps are and where the statutes need enhancing to make clear their authority to provide those things they are doing. I would hope that, unless Congress is ready to assess and provide necessary funds through some other organization, such as a glorified court security official perhaps in the guise of the Capitol Police, by analogy to the congressional situation—unless that is desired and the aim of Congress, then let us look for ways to improve the present status of the marshals. I will leave it at that.

I appreciate the opportunity to express these views which are my own.

Mr. LISKER. Thank you very much, Judge Pointer.

How would you assess the professionalism of the Marshals Service—that is, the people that you have come in contact with, primarily?

Judge POINTER. It has been mixed. The majority of marshals have been quite capable, competent, and well trained so far as I can tell. Some have become disenchanted, and I will not point fingers as to why this has occurred, insofar as their role of coming into the courtrooms and of serving papers.

In that particular area, I frankly have found that court security officers who have from time to time come into the courtroom are interested and more enthusiastic in many respects than some of the marshals that were coming in.

I do not use that as personal criticism. I think that is largely a matter of the tone that has been going through the organization in terms of what they have wanted to do and where they have wanted to go.

Mr. LISKER. How do you think security arrangements could be improved in the Federal courts?

Judge POINTER. I do not have any ideas as to how they could be improved other than to continue in the directions we are going. I think we can improve the protective services under present legislation and under this legislation.

I am aware that Mr. Morris indicates in one of his letters to the committee, or at least to the Judicial Improvements Committee, a concern over being able to attract personnel.

I am not aware of any low esteem that the Marshals Service has. Perhaps he is aware; perhaps it varies from one place in the country to another. Maybe there are greater difficulties in other parts of the country than there are where we are.

Mr. LISKER. FBI agents who work unscheduled overtime are paid on the basis of, I think, 25 percent of a GS-10. However, having been an FBI agent, I can tell you that it is money that is well earned.

I think things have probably not improved along those lines. In other words, the agents are putting in many more hours for that compensation. It is important, I believe, to have the authority to pay this compensation incorporated in the legislation.

I am not sure I understand your statement regarding the incorporation of a union agreement, because I believe it is Senator Denton's interpretation that the provisions in S. 2044 concerning overtime are simply legislative authority to pay overtime when required.

Judge POINTER. Well, there are actually two references in the fees portion of this statute in which there is a reference made to overtime. I take it that the failure to have statutory authorization to pay overtime does not mean one cannot be paid overtime.

Mr. LISKER. I think it is just tidier to set the authority out in the legislation.

Judge POINTER. What I am really suggesting is that I would not like that set in concrete, which would suggest that from now on people will be handled as per-hour employees. I understand, of course, that there are provisions for comp time and other similar arrangements at virtually all Federal employment levels other than judges and Members of Congress.

I would prefer not to have it set by statute for Federal marshals if they are going to be enhanced in their status as law enforcement officials.

Mr. LISKER. Well, we will have a couple of questions for you, Judge Pointer, for the record.

I want to also add, Judge Pointer, that Chairman Thurmond has some questions which we will also forward to you for your response.

We appreciate your coming up here today and testifying. I know Senator Denton was particularly pleased to see you up here and your other colleague from the great State of Alabama.

Judge POINTER. Thank you very much.

Mr. LISKER. Thank you.

[Judge Pointer's responses to additional questions submitted by Senators Denton and Thurmond follow:]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
FEDERAL COURTHOUSE
BIRMINGHAM ALABAMA 35203

CHAMBERS OF
SAM C. POINTER, JR.
CHIEF JUDGE

August 25, 1986

The Honorable Jeremiah Denton
United States Senator
Committee on the Judiciary
Washington, DC, 20510

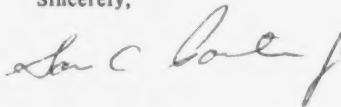
Dear Senator Denton:

I appreciated the opportunity to express my views on S. 2044, the "United States Marshals Service Act, on August 13th, and hope that my comments will be of some value to the Judiciary Committee and the Subcommittee on Security and Terrorism.

Attached are my responses to the additional questions submitted following the hearing. As was true with my earlier testimony, these responses represent my own individual views rather than those of any committee of the Judicial Conference, of the Federal Judges Association, or any other group.

The staff members from the Subcommittee and from your office were very thoughtful and attentive in seeing that I was kept advised of the hectic pace of the Senate during the week of August 11th and that my visit to Washington was a pleasant one.

Sincerely,



* * *

COURT SECURITY

HOW, IF AT ALL, DO YOU BELIEVE THAT SECURITY ARRANGEMENTS
COULD BE IMPROVED AT FEDERAL COURTS?

1. The number of persons involved in providing security will need to be increased. Particularly is this important in order to provide security when needed at divisional courthouses outside the central offices of the Marshal, CSOs, etc.

2. Those involved in providing security need to see that as their primary responsibility, not as a demeaning chore, and as an important task even when there is no "activity."

AUTHORIZATION TO CHARGE FEES

DO YOU AGREE WITH THE APPROACH OF S. 2044 IN AUTHORIZING THE MARSHALS TO CHARGE FEES FOR THEIR SERVICES BASED ON THE ACTUAL COSTS OF SUCH SERVICES?

Yes, provided that appropriate cross-references or other language be inserted to assure that this does not preclude the courts from permitting actions to be brought or maintained without prepayment of fees.

CONTRACT PROVISIONS

S. 2044 WOULD AUTHORIZE THE MARSHALS TO ENTER CONTRACTS TO PROVIDE FOR THE SERVICE OF GOVERNMENT PROCESS.

WHAT IS YOUR OPINION OF THAT PROVISION?

Such a provision has merit provided it does not preclude courts from specifying that service be effected by a Marshal in particular cases to emphasize the importance of the process (e.g., certain complaints for preliminary injunctions).

RESPONSE OF CHIEF JUDGE POINTER
TO QUESTION SUBMITTED BY SENATOR THURMOND

1. WHAT EFFECT WOULD S. 2044 HAVE ON THE SECURITY AND SAFETY OF COURTROOMS IF FEDERAL JUDGES LOSE THEIR STATUTORY AUTHORITY TO EXERCISE DISCRETION TO REQUIRE THE PRESENCE OF MARSHALS IN THE COURTROOM?

Security and safety of the courtrooms will occasionally be impaired if federal judges do not have the statutory authority to require presence of a marshal (or court security officer) in the courtroom. Guidelines will work "most of the time," but there will be a few occasions in which something occurs immediately prior to or during a trial or other proceeding to alert the judge to the need for the immediate presence of such a security officer and there may not be sufficient time to debate the applicability of guidelines or the other work demands of the Marshal's deputies.

Mr. LISKER. We have, in addition, a letter from the chief judge of the U.S. Tax Court which he has asked to appear in the record, which, without objection, will be done.

[The letter referred to above follows:]

U.S. TAX COURT,
Washington, DC, August 6, 1986.

HON. JEREMIAH DENTON,
Chairman, Senate Judiciary Committee, Subcommittee on Security and Terrorism,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR DENTON: I respectfully request that this statement be entered into the record of your Subcommittee's hearing on August 13, 1986 on S. 2044, the United States Marshals Service bill.

As Chief Justice of the United States Tax Court, I write to express the Court's concern with respect to the problem of guaranteeing the safety and security of our Judges and Special Trial Judges, the parties and witnesses and all persons who come before and attend sessions of this Court. Further we are concerned for the safety of all those members of the public who must come to our "home" Courthouse here in Washington to file papers or for other legitimate reasons.

As you are aware, S. 2044, which is pending before the Senate Judiciary Committee, Subcommittee on Security and Terrorism, authorizes the U.S. Marshal Service "to provide for the safety and security of the Federal courts of the United States." The U.S. Tax Court is a court of record established under Article I of the Constitution. 26 U.S.C. § 7441. Tax Court Judges are appointed by the President, by and with the advice and consent of the Senate, for terms of 15 years. 26 U.S.C. §§ 7443(b), (e). As such, the U.S. Tax Court is not a "court of the United States" as that term is defined for purposes of Title 28, U.S. Code. See 28 U.S.C. § 451. Consequently it is not entirely clear that the U.S. Tax Court was intended to be covered by S. 2044 which authorizes the U.S. Marshals Service to provide security for "Federal courts of the United States."

Under existing law, U.S. Marshals are part of our general Tax Court operations. This is so because while the Tax Court is not covered by the specific provision of Title 28 governing the powers and duties of U.S. Marshals (28 U.S.C. § 569), nonetheless, Title 26 states that the Tax Court "shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree or command as is available to a court of the United States." 26 U.S.C. § 7456(e). This necessarily involves assistance of the U.S. Marshals.

Furthermore, as a result of the Tax Court's real concerns about the security of its Judges while actually holding Court in some 80 cities throughout the country, the Senate Finance and House Ways and Means Committees are considering including in the tax reform bill, H.R. 3838, provisions authorizing the Chief Judge of the Tax Court to require the U.S. Marshal for the district in which the Tax Court is sitting to attend sessions of the Court. See section 544 of the Senate version of H.R. 3838. By statute we are required to provide a forum convenient to taxpayers. 26 U.S.C. § 7446.

This proposed amendment to Title 26 would not be a totally new practice. The Tax Court currently is party to a reimbursement agreement with the U.S. Marshals Service under which the Marshals Service provides Deputy U.S. Marshals for courtroom security when the Tax Court determines it is necessary. We are experiencing an increasing number of threats against our judges as the tax protester movement deepens in intensity.

With this background in mind, we ask that you, in reviewing S. 2044, taken into account the security concerns of the U.S. Tax Court and our status as an Article I Court which is specifically authorized to have the same assistance as a "court of the United States" in carrying out its writs and orders. We respectfully ask that the Tax Court be specifically included in the bill so that there be no doubt that our judges are entitled to the same protection as other Federal judges.

I appreciate the opportunity to submit these comments for the hearing record. Please contact me if there are any questions or if I can be of assistance with this matter.

Sincerely,

SAMUEL B. STERRETT,
Chief Judge

Mr. LISKER. This hearing is concluded.

[Whereupon, at 12:38 p.m., the subcommittee was adjourned.]

